

**STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS**

**IN THE MATTER OF:**

**Nationscapital Mortgage Corp., et al.,**

**Respondents.**

**DFI Case No. 97-083-C01**

**INITIAL ORDER**

**APPEARANCES**

Gary Roberts, Attorney at Law, appeared as counsel for Nationscapital Mortgage Corp., Jamie Chisick, Michael Buff, Kevin Kraus and Darin Williams (Steven B. Tubbs had appeared as counsel for Nations, et al., at earlier proceedings). Alice M. Blado, Assistant Attorney General, appeared for the Department of Financial Institutions (DFI)--also appearing for DFI were Richard A. McCartan, AAG, and Marlo DeLange, AAG. Respondent Scott Johnson appeared pro se.

**PROCEEDINGS**

Prehearing conferences were held before Administrative Law Judge Elmer E. Canfield of the Office of Administrative Hearings on July 22, 1998, October 20, 1998, February 9, 1999, May 14, 1999 and August 11, 1999. These conferences were held by conference call from Olympia, Washington.

Forty days of hearings were held before Administrative Law Judge Elmer E. Canfield, of the Office of Administrative Hearings between the dates of January 31, 2000 and October 25, 2000. The hearings were held in Olympia, Washington; Tacoma, Washington; Seattle, Washington; and Vancouver, Washington.

## MEMORANDUM

Nationscapital Mortgage Corp. (Nations) operated as a mortgage broker in the State of Washington for several years prior to May of 1998. Following operations of predecessor GAMC, Nations held broker operating authority in Washington beginning in May 1995.

DFI received complaints against Nations from Washington consumers. In June of 1997, DFI began an investigation of Nations.

On May 13, 1998, DFI issued Nations a Statement of Charges and Notice of Intention to Enter an Order (No. 97-083-C01). The Charges were retroactively amended on September 25, 1998. The Statement of Charges, including the Amended Charges, will be referred to as "Charges" for purposes of this order. As set out in the Charges, DFI seeks to revoke Nations' mortgage broker license, impose fines, restitution and other penalties against Nations and individual Respondents.

Respondents filed a timely request for an administrative hearing.

DFI subsequently entered into Consent Orders with two of the Respondents, Brad Chisick and Steven Willis, who are no longer parties to this proceeding.

## FINDINGS OF FACT

1. Nationscapital Mortgage Corp. (Nations) operated in the State of Washington as a mortgage broker. The Department of Financial Institutions (DFI) issued an interim license to Nations on May 30, 1995, Exhibit 5, Page 2. This was converted to permanent status effective June 30, 1995, Exhibit 6.
2. Nations, headquartered in Orange, California, was authorized to hold itself out as a mortgage broker in Washington from the location of 800 Bellevue Way NE, Suite 400, Number 448, Bellevue, Washington 98004. Nations filed and maintained a surety bond for this location. This Bellevue location was the only licensed location for Nations in Washington and the only location from which Nations could hold itself out as a mortgage broker or otherwise conduct business of a mortgage broker in the State of Washington.
3. Jamie Chisick was registered with DFI as an owner, director and president of Nations. Jamie Chisick resides in California. Steven Willis was registered with DFI as Nations designated broker for all Washington business; Mr. Willis worked out of the Nations Bellevue office and "ran the show in Washington" upon the approval of Jamie Chisick. (Transcript, page 3864). Scott Johnson worked for DFI as a "field rep." out of the Nations Bellevue office. Michael Buff, vice president of operations, worked at Nations California headquarters. Kevin

Kraus worked as telesales manager for Nations at the California office. Darin Williams worked as the sales manager for Nations at the California office.

4. Pursuant to a March 3, 1999 Consent Order entered into between Brad Chisick and DFI, the charges against Brad Chisick were resolved. Thus, Brad Chisick was no longer a respondent in this matter.

5. Pursuant to a December 14, 1999 Consent Order entered into between Steven Willis and DFI, the charges against Steven Willis were resolved. Thus, Steven Willis was no longer a respondent in this matter. See Exhibit No. 513.

6. By letter dated February 21, 1995, Benjamin Medina, chief financial officer of General Acceptance Mortgage Corp. (GAMC) and Nations, notified DFI that GAMC was changing its name to Nations effective March 1, 1995. The letter also stated that, "The name change includes a change in ownership. The president of the company, Jamie Chisick will be the principal owner." Mr. Medina noted that an individual background form had originally been filed "for Jamie Chisick as President of G.A.M.C. INC." Nations also submitted an amended endorsement changing GAMC's surety bond to Nations, as well as a Washington Certificate of Status for Nations from the Washington Secretary of State "to affect the name change on our license with your department." Mr. Medina noted his expectation to receive a revised interim license "under our new name". See Exhibit 3. Additional forms (including an individual background form and letter verifying experience for new branch manager Steven Willis) were provided by Mr. Medina to DFI with a letter dated March 8, 1995 "on the name change from G.A.M.C. INC. to Nationscapital Mortgage Corporation. Again, Mr. Medina included the expectation of receiving a revised interim license "under our new name". See Exhibit 4. DFI thereupon processed this as a name change and allowed Nations to operate under the licensed name of GAMC during the process of the name change to Nations. The change of name of the license was made on May 30, 1995.

7. DFI learned in March of 1997 that Nations was utilizing the services of a California escrow company, Riverview Escrow Co., Inc. (Riverview), in its Washington Mortgage broker operations. Riverview is owned by Jamie Chisick and does not hold a license to operate as an escrow company in Washington. DFI began inquiring into the Riverview matter.

8. In April 1997, John and Carol Salick filed a complaint with DFI against Nations. In general, the Salicks complained that Nations did not disclose information, that Nations misled them regarding fees and that Nations did not pay them money that they were supposed to receive.

9. The Salick complaint was followed by another complaint against Nations in late May 1997 from Nevada Prater. Ms. Prater had filed a complaint against Nations and Quality Mortgage USA, Inc. in April 1997 in United States District Court. The complaint alleged, in

part, that Nations made false and fraudulent representations in its dealings as a mortgage broker, that Nations violated applicable disclosure requirements and that Nations imposed excessive broker fees.

10. On June 24, 1997, DFI began an investigation of Nations. DFI, headed up by Chuck Cross, Supervising Analyst, visited Nations Bellevue office and demanded Nations to produce records including all loan files, trust account records, general account records, copies of advertisements soliciting Washington business, employee records, agreements and contracts between Nations and other entities including lenders, all lender rate sheets and all sales manuals, employee instruction manuals, manager handbooks and other similar materials. In addition to a June 24, 1997 "Request Items" letter to the designated broker, Mr. Cross served Steve Willis with the 97-083-S01 Demand For Production of Records dated June 23, 1997, Exhibit 15. However, no loan file records were available for DFI's review. Nations employee Steve Willis explained that it was Nations **record keeping** practice to maintain its records in California. Nations initially claimed DFI gave it permission to maintain books and records in California. On June 25, 1997 Michael Buff faxed DFI a copy of an April 7, 1995 letter from Jamie Chisick to DFI requesting permission to keep records in California. Such permission had been requested and granted in other states in which Nations operated and Jamie Chisick assumed it had been granted by Washington DFI. DFI had no record of ever receiving such letter and never responded to any such letter. In any event, DFI did not even have authority to allow for the out-of-state keeping of records in April 1995—rules permitting such were promulgated June 21, 1995. No written agreement allowing such out-of-state record retention was ever executed.

11. DFI seeks a fine of \$97,800.00 against Nations and \$97,800.00 individually against Jamie Chisick for Nations failure to maintain records in the State of Washington [RCW 19.146.060(3)]. This was calculated at \$100.00 per day for the 978 days of violations from May 30, 1995 (the date Nations received the interim license with the name change) through January 31, 1998.

12. At the June 24, 1997 DFI visit to Nations Bellevue office, DFI took testimony under oath from Steven Willis. It was the practice of Nations to solicit Washington consumers by telephone from California and then dispatch Mr. Willis or other staff to the consumer's home to obtain applications and signatures on loan documents. Nations' Bellevue office would then forward the documents to Nations' California office. Nations then had Mr. Willis or other staff return to the consumer's home to close the transaction. All loan documents were sent to California where Nations maintained them.

13. DFI received some manuals from Nations Bellevue office during its June 24, 1997 visit. Steven Willis initially told Mr. Cross that there were no such manuals at the Bellevue office, but upon further questioning, Steve Willis later produced them. These consisted of a Document Signer Manual (Exhibit 82) and a Telemarketing Manual (Exhibit 83). In a letter to

Chuck Cross, Exhibit 26, Michael Buff stated, "The only official manuals approved and maintained by Nationscapital are a Document Signer Handbook and a Telemarketer Handbook." Mr. Willis received the Document Signer Manual ("the track"), Exhibit 82, from either Michael Buff or Kevin Kraus. Jamie Chisick and Darin Williams instructed Willis to use "the track". More complete versions (Exhibits 38 and 39) were later provided by Nations in response to DFI subpoena for documents pertaining to Nations' business in Washington. Nations Telemarketing Manual and Nations Document Signer Manual were compiled primarily by Jamie Chisick and Michael Buff. Exhibit 144.

14. In the Charges, based on the alleged making of false statements, DFI seeks a "pre-July 21, 1997 subsection (8) fine under RCW 19.146.0201 of \$9,100.00 against Nations and a \$9,100.00 fine individually against Jamie Chisick (the fine was calculated at 91 days of violations times \$100.00).

15. Darin Williams, Nations Sales Manager, conducted training sessions in which techniques to mislead borrowers were covered. Mr. Williams trained document signers and loan officers. In one such session, Darin Williams with the assistance of Scott Johnson, instructed document signers on how to lead borrowers to believe that they did not qualify for a low fixed-rate loan due to late mortgage payments. Mr. Williams also instructed on how to tell borrowers who wanted a fixed-rate loan that they should accept an Adjustable Rate Mortgage (ARM) because it will allow them to show the bank that they can make the payments and that the ARM will convert to the low fixed-rate loan after eleven months as long as they make their payments on time. The training session of Mr. Williams and Mr. Johnson also covered how to make it sound like the "amount financed" on the Truth In Lending (TIL) is the same as the loan amount. The training also included a technique on how to make borrowers think that their loan payments included taxes and insurance when they actually didn't. See Training Session Tape, ~~Exhibit~~ 140.

16. The techniques referenced above are also contained in the Document Signer Manual, Exhibit 39. This manual notes that the Nations employee is responsible for all information in the manual that applied to his or her sales position and that the employee should study and re-study such information. Some excerpts from the Document Signer Manual are set out as follows:

Borrower: I told my loan officer that I wouldn't go over seven percent. This says here eight percent? I don't want an eight percent loan.

Doc Signer: I think we may have a small difference here probably due to (STATE HARM) those late payments on your Mervyn's[.]

Exhibit 39, Page 10.

Borrower: Now what's this seventy-five thousand dollars right here on this paper?

Doc Signer: Oh, well the Escrow Company is just showing you the amount there but that isn't the amount financed and I'm going to show these figures and go over all the amounts in a few seconds...

Borrower: Is that the amount of my loan?

Doc Singer: Make no mistake about it this is not the amount financed. Let me explain that to you.

Borrower: Yes.

Doc Signer: This is all going to be broken down for you completely in a few more papers and I'd like to go over everything with you here. These papers are merely the Escrow Instructions and I'd like you to approve here that you want the Escrow company as a protection for yourself. **[THE IDEA IS TO PASS BY THE FIRST OBJECTION CONCERNING THE DIFFERENCE BETWEEN THE LOAN AMOUNT AND AMOUNT FINANCED. LET BORROWER KNOW THAT YOU NEED TO EXPLAIN THE DIFFERENCE WHEN YOU GET TO ALL THE PAPERS WITH ALL THE NUMBERS ON IT...]**

Exhibit 39, Page 18.

Borrower: I don't want an adjustable, I only want a fixed rate.

Doc Signer: Your loan officer is trying to re-establish your credit to allow you to earn a preferred fixed rate, save you money now, and also help you earn a good fixed rate after one year, that's what you want, isn't it? **(USE REFI LETTER NOW IF YOU HAVE TO)**.

If customer continues to object over adjustable rate:

Doc signer: What is it about this adjustable rate note that you don't understand?

Borrower: I just don't want my payments to go up.

Doc Signer: Well I can certainly understand that. But you do want to eventually earn a fixed rate right?

Borrower: Well, yes, that's what I want.

Doc Signer: Exactly. So to help you earn that fixed rate, your loan officer has set you up with this special adjustable rate product which will allow you to do that, and that's what you want isn't it?

Exhibit 39, Pages 25-26:

Doc Signer: This is your payment. Total monthly payment is (five sixty seven). As long as you understand that this is your payment as we know it now, why don't you approve right here.

Borrower: Are my taxes and insurance included in this payment?

Doc Signer: O.K. Did you inform your loan officer that you wanted your taxes and insurance taken care of in this?

Borrower: Oh yes, I have to take care of those.

Doc Signer: All right, no problem. You should call your loan officer to discuss this with him, but I know that it is not difficult to set these up at all. As long as you are going to talk to your officer about this, why don't you approve this right here.

Doc Signer: Thank you. (Flip) Now let me make a note of that so that your loan officer can call you right away on your question.

**Objection:**

Borrower: But are they (taxes and insurance) included in this payment?

Doc Signer: Did your Loan Officer tell you they were?

Borrower: Yes.

Doc Signer: If your Loan Officer told you he/she did them, I'm sure it's going to be taken care of...

But the good news is that if for whatever reason it hasn't been done yet, it's a real simple process and we'll take care of that for you, it's easy!...(CONTROL PHRASE)

Borrower: But won't my payments go up?

Doc Signer: Well, of course they are reassessing taxes all of the time so there might be some slight adjustments. By the way, (immediately ask a question)

Borrower: Continues to object.

Doc Signer: You wanted to switch over to a fixed rate, right? O.K. so this step-down adjustable rate product takes care of your insurance and taxes through the first year/six months. If you don't want to switch to a fixed rate at that time, it will be very easy to set those up...(CONTROL PHRASE)

Exhibit 39, Pages 41-42:

Similar scripts are contained in other sections of the manual, i.e., the "Common Objections" section.

17. The manuals contain instructions and methods to mislead borrowers and avoid answering borrowers' questions directly and to instead change the subject and/or direct the borrowers' attention elsewhere. Nations also used role-playing containing techniques to mislead borrowers. One such approach was to "blow-by" the borrowers' questions instead of directly answering. Another approach was to have the borrower believe that the loan amount is the same as the amount financed. Nations also told borrowers that Nations used "investor lots" to get them the best program, but this was not the case.

18. Nations **Telemarketer Manual**, Exhibit 38, also contains methods and techniques on how to get by borrower objections and how not to answer borrower questions and to get the borrower to apply for a loan with Nations. Kevin Kraus trained and supervised Nations' telemarketers (as set forth in Ex. 71, Nations' organizational chart, Mr. Kraus is also listed as supervisor of Washington field rep. Scott Johnson). Mr. Kraus was supervised by Nations president Jamie Chisick. Nations telemarketers used the Telemarketer Manual in their dealings with Washington consumers. Also, Nations employee Susan Strang used the telemarketing manual to conduct telemarketing from the Bellevue office.

19. Though Nations agrees that it used its Telemarketer Manual in its Washington mortgage broker operations, it maintained that its Document Signer Manual was not used in its



Washington operations. Contrary to this representation, the evidence established that both of these manuals were used in Washington. Nations' testimony that the Document Signer Manual was not used in Washington is inconsistent with credible, firsthand testimony of borrowers in this case—instead of repeating such evidence, reference is made to the testimony of the borrowers set out in Findings of Fact Nos. 70 through 101 below. Nations' testimony that the Document Signer Manual was not used in Washington is rejected as being not credible. Nations acknowledged, as set out above, that Nations approved and maintained the Document Signer Handbook and the Telemarketer Handbook as its official manuals. The Document Signer Manual methods and techniques were used in Washington by Steve Willis, Scott Johnson and others. Jamie Chisick tested Mr. Willis on his knowledge of the Document Signer Manual "track", including the "APR explanation" (Annual Percentage Rate). The evidence of record established that Nations used its Document Signer Manual and its Telemarketer Manual in its Washington mortgage broker operations.

20. Nations engaged in persuading borrowers who wanted a fixed-rate loan to accept an adjustable-rate mortgage (ARM) by telling borrowers they did not qualify for the fixed-rate loan and that if they took the ARM and made timely payments for a year and met a few other conditions, the ARM would automatically convert to a fixed-rate loan. Nations provided borrowers with a letter signed by Nations president Jamie Chisick setting forth the conditions to be met by the borrowers leading them to believe that if they met said conditions, that their ARM would convert to a fixed-rate loan—see borrower testimony. In actuality, the ARM loans did not automatically convert to fixed-rate loans. Upon closer reading, the Nations' letter stated that if the borrower met the conditions, Nations agreed "...to process and submit to prospective lenders your request for a refinance from an adjustable loan to a fixed rate loan within a 12 month period...". The listed conditions were: (1) Payments on your mortgage are paid on time and without late charge; (2) Your debt to income ratio remains acceptable; (3) Payments on your consumer debts are made in a timely manner and without late charge; and (4) The value on the subject property does not decline. Contrary to what Nations told the borrowers, the loan papers did not provide for conversion from an ARM to a fixed-rate loan. The borrowers would actually have to reapply, go through the loan application process again, pay refinance costs and usually pay a prepayment penalty.

21. Borrowers complained to Nations that Nations deceived and misled them. Some of these borrowers got through and talked directly to Jamie Chisick regarding their complaints. When settlements were reached, Jamie Chisick was the Nations representative who approved such settlement agreements and settlement payments. See for example Settlement Agreement with borrower Murphy signed by Jamie Chisick, Exhibit 91.

22. Jamie Chisick maintained that he did not know of Washington borrower complaints involving Steve Willis and that he was unaware that there was any problem with Steve Willis until the time of the Salick and Prater complaints. As explained by Jamie Chisick (prior to the Salick and Prater complaints): "We did loans and borrowers never indicated to me that there

was a problem with the loans, and I just didn't have any indication that I saw that there was a problem with what Steve was doing. (Transcript, page 3803). The Salick and Prater complaints came about in April and May of 1997. As established by credible borrower testimony (set out below), complaints from Washington borrowers had been specifically brought to Jamie Chisick's attention prior to such time. Several of these complaints were about loans in which Steve Willis was specifically involved; see for example borrower testimony of: Heidi Monroe (fall 1995); Sharon Shoop (Oct. 1995); Gloria Post (spring 1996); and Phyliss Beall (Oct. 1996). The Washington borrower complaints also involved loans handled by Scott Johnson and other Nations' representatives.

23. DFI seeks a \$64,300.00 fine against Nations and a \$64,300.00 penalty against Jamie Chisick under the fraud and unfair and deceptive practices provisions of the Mortgage Broker Practices Act [RCW 19.146.0201(1), (2) and (3)]. This was calculated at \$100.00 per day times the identified 643 separate violations.

24. In the Charges, DFI also seeks, pursuant to **subsection (7) of RCW 19.146.0201**, to impose a \$29,300.00 fine for making false or deceptive statements or representations; DFI seeks to impose such fine against Nations and a \$29,300.00 fine individually against Jamie Chisick. This fine was calculated at \$100.00 for each of the identified 293 separate violations. Again, refer to the borrower testimony of record regarding Nations' statements and representations to Washington consumers regarding their residential mortgage loans. Nations led borrowers to believe they would be getting a fixed-rate loan, thus the borrowers went through with the application process. Borrowers were later surprised not to be getting the fixed-rate loan they had discussed with Nations, but rather an ARM. Nations misled borrowers regarding the terms and conditions of their loans. Nations led borrowers to believe that their ARM loan would convert to a fixed-rate loan after one year, but this did not happen. As indicated above, borrowers complained to Jamie Chisick.

25. DFI followed up with telephone calls to Nations for records between June 24, 1997 and August 4, 1997. Records were not provided during such period. Another formal Demand for Production of Records (97-083-S02) was issued on July 24, 1997, Exhibit 19. Chuck Cross talked to Michael Buff on August 4, 1997 at which time Mr. Buff voiced concern about DFI's possible release of its investigative finding and records to others. DFI had learned that other states were taking action on the Riverview Escrow matter. DFI also learned that the Washington Department of Licensing was investigating Nations and Steve Willis regarding alleged Notaries Public violations.

26. There were several months of disputes between DFI and Nations regarding DFI's access to Nations' records. Nations attorney Douglas Smart sent DFI a letter on July 9, 1997 raising concerns about DFI's June 24, 1997 visit. Mr. Smart said Nations intended to comply with the subpoenas and demands for records subject to certain concerns such as requests for information under the Public Disclosure Act. Mr. Smart attached a formal Objection to DFI's

demand. Mr. Smart confirmed that Nations kept its records on Washington loan transactions in California.

27. On August 6, 1997 DFI entered and served a subpoena (97-083-S03) on Nations for production of records no later than August 15, 1997, Exhibit 20. Nations filed a formal objection to the subpoena with DFI. Nations also filed a Motion for Temporary Restraining Order in Thurston County Superior Court to enjoin DFI from disclosing or releasing Nations' confidential and proprietary records, files and documents to the public. Nations' attorney noted that, except for the public advertisements requested, the documents DFI was requesting were private, confidential and proprietary business records and repeated Nations' concern against their being disclosed to third parties.

28. On August 15, 1997 nations obtained a Temporary Retraining Order (TRO) restraining DFI from disclosing or releasing certain information. The TRO was filed in Thurston County Superior Court on August 18, 1997.

29. On August 21, 1997 DFI wrote Nations requesting compliance with the August 6, 1997 subpoena. Nations attorney Paul Battaglia agreed the issue of records protection had been satisfied but that records had still not been transferred to Washington and could not be reviewed by DFI until at least September 3, 1997.

30. On August 27, 1997 Nations attorney Douglas Smart wrote DFI that records would be available for DFI review on September 3, 1997. Mr. Smart also acknowledged that Salick had been overcharged \$8,805.00 and that the Truth in Lending Disclosure statement (TIL) had been misleading to the borrower.

31. On August 29, 1997, DFI entered a Temporary Cease and Desist (TCD) against Nations. The order was entered based upon findings by the Department of unlicensed business in Washington, failure to maintain an adequate bond, employment of a scheme, device or artifice to defraud or mislead borrowers, failing to make disclosures as required, making false or deceptive statements or representations in regard to rates, points, or other financing terms or conditions, engaging in bait and switch practices, making false statements in connection with an examination of Nations' business, failing to maintain a trust account as required by the statute and rules, failing to maintain books and records readily available as required by statute and failing to provide the Department with access to these records. Thus, the Director determined that the public was likely to be substantially injured by any delay in entering an order.

32. Nations obtained a temporary stay of the TCD in Thurston County Superior Court in which Nations was ordered to:

- a. Comply with the law and restrain from:

- i. Making false promises or misleading statements in regards to loan or brokerage fees, interest rates and costs, contrary to the requirements of state disclosure in federal truth in lending disclosure statements;
  - ii. Falsely notarizing documents in violation of 19.146.0201(1);
  - iii. Failing to make timely disclosure of lending information regarding loan or brokerage fees, interest rates, and costs mandated by state disclosure and federal truth in lending disclosure statements; and
- b. Keep and maintain its business records, subject to the current and future orders of this Court, accessible to the Department for its review and investigation pursuant to RCW 19.146.060 and the rules adopted thereunder; and
  - c. Promptly file with the Department a Certificate of Authorization regarding any trust accounts used in connection with its business in Washington, pursuant to RCW 19.146.050 and the rules adopted thereunder.

33. On September 2, 1997 DFI issued a Resolution Letter in the Prater complaint. The letter required a response by September 18, 1997. Nations did not file a response with DFI.

34. On September 15, 1997, the court granted Nations' motion for preliminary injunction enjoining DFI from releasing records to third parties without notice and opportunity to object. DFI and Nations settled and entered in to a Stipulation and Agreed Order.

35. On September 16, 1997 the court granted Nations' motion for a second stay and found that DFI did not have authority under RCW 19.146.227 to order Nations immediately cease doing business or to take other affirmative acts as directed in the Temporary Order to Cease and Desist. The court granted the Stay pursuant to RCW 34.05.550(3), subject to Nations' compliance with several terms and conditions. Again, Nations was ordered to comply with the law. The court specifically restrained Nations from: (a) Making false promises or misleading statements in regards to loan or brokerage fees, interest rates and costs, contrary to the requirements of state disclosure and federal truth in lending disclosure statements; (b) Falsely notarizing documents; and (c) Failing to make timely disclosure of lending information regarding loan or brokerage fees, interest rates, and costs mandated by state disclosure and federal truth in lending disclosure statements. Again, the court required Nations: to keep and maintain its business records, subject to the current and future orders of the Court, accessible to the Department for its review and investigation pursuant to RCW 19.146.060 and the rules adopted thereunder; and to promptly file with the Department a Certificate of Authorization regarding any

trust accounts used in connection with its business in Washington, pursuant to RCW 19.146.050 and the rules adopted thereunder. See Stay, Exhibit No. 24.

36. On September 17, 1997 DFI again went to Nations' Bellevue office to investigate Nations' books and records. DFI provided Mr. Buff with a written list of investigation questions. DFI made it clear that Nations was to provide records for all periods of time in which Nations has been licensed under its current name or its prior name of GAMC. DFI notified Nations that it would assess investigation fees of \$45.00 pr hour for each man hour.

37. On September 18, 1997, DFI sent Nations a letter noting the following missing items:

- a. All trust account records for September 1994 through May 1995. To date, records have not been produced for this period of time. For the period in which records were provided (June 1995 through January 1997), missing from the records were bank statements, reconcilements to the bank statements, a check register recounting all deposits, disbursements and adjustments at the time the transaction was made, and canceled checks and invoices supporting disbursements made from the trust account.
- b. Any files for loans originated prior to June 1995.
- c. All general accounting records.
- d. Lender rate sheets.

38. Michael Buff responded on September 22, 1997 that the files were complete. DFI noted that "at least some information was missing" in 371 files and thereupon, in the Charges, seeks to impose a fine of \$37,100.00 against Nations and a fine of \$37,100.00 against Jamie Chisick and a fine of \$37,100.00 against Michael Buff for violations under RCW 19.146.0201(8). This was calculated at \$100.00 times 371 files that were incomplete. DFI found "loose bits of paper" in the files—it concluded that documents such as the document signer checklists, conversation logs and Estimated Cost Analysis forms (Monster Forms) had been stripped from the files. DFI argued that Mr. Buff was responsible for the documents being missing though this was not established by evidence. Though Steve Willis was of the opinion that Mr. Buff removed documents from Nations' files, such was not established as a matter of fact. It was not established that Nations' loan officers routinely put conversation logs in files. Even though the Estimated Cost Analysis is listed in the Document Signer Manual stacking order, DFI found less than 10 in the over 500 files reviewed—again, it was not established that Nations routinely maintained the Monster forms in their files. Mr. Buff denies removing documents from files but acknowledges that Nations staff may have removed duplicate copies of documents. The evidence did not establish that Mr. Buff removed loan documents from the files in question, nor

that he was aware such had taken place. Further, Jamie Chisick was not shown to have removed documents or to have knowledge that such was done.

39. No GAMC records were provided. Nations took the position that GAMC was a separate corporation with different ownership and that GAMC files are not maintained by Nations.

40. On September 25, 1997 DFI reiterated its previous demands and subpoena. DFI again advised Nations that it considered GAMC to be the predecessor to Nations and was requesting such records.

41. By letter dated September 30, 1997, Nations' attorney Steven Tubbs notified DFI that GAMC was a corporation and that Nations was a different corporation that took over GAMC's Bellevue office and retained some of GAMC's employees. Mr. Tubbs characterized it as a "clean break".

42. Nations was not available for investigation purposes from October 1, 1997 through October 13, 1997.

43. DFI completed its on-site investigation of Nations' records on November 4, 1997. Nations policy of maintaining files in California caused reviewing problems for DFI and resulted in DFI not being able to review some August 1997 files. Also, September, October and November files were not made available for DFI review. DFI requested all such files, as well as lender rate sheets, and responses to the Salick and Prater resolutions.

44. On November 24, 1997 DFI sent a new complaint filed by Deborah Agena to Nations for its response.

45. On November 26, 1997 Nations attorney Douglas Smart noted that Mr. Buff was sending copies of the missing files to the Bellevue office (Nations continued to maintain its files in California). Mr. Smart also responded that Nations does not maintain outdated lender rate sheets in its files.

46. On December 5 and 8, 1997 DFI received additional files for September, October, November and part of December 1997. DFI requested files originated after December 9, 1997 and also reminded Nations of its overdue responses to the Salick and Prater resolutions. Nations provided additional files on January 16, 1998 and February 27, 1998.

47. On January 22, 1998 DFI sent a Directive to Appear and Give Testimony Under Oath to nine Nations employees: Jamie Chisick, Darin Williams, Steven Willis, Scott Johnson, Kevin Kraus, Todd Boyd, Marie Nino, Joe Nardo and Carmen Bonifacio. Exhibit 30. Nations sought to impose conditions on DFI's Directive, but DFI rejected such conditions. None of the Nations' employees appeared and gave testimony as directed by DFI. Some of the nine individuals

informed Mr. Cross that Nations management instructed them not to appear. DFI considered Nations to have refused to comply with its Directive.

48. On February 2, 1998 DFI again requested a Nations response to the Agena complaint. By letter dated February 9, 1998, Mr. Buff stated that both the Salick, and Agena complaints had been settled and that Nations was still litigating and negotiating the Prater complaint.

49. Nations attorney Paul Battaglia notified DFI by letter received February 11, 1998 that DFI must limit its regulatory investigation to issues revolving solely around the Prater complaint. Mr. Battaglia referenced that Nations resolved its issues with Salick and Agena and that "...Prater must now be the sole focus of the Department's investigation."

50. DFI notified Nations that its responses were not satisfactory in that they did not address DFI's concerns of violations committed.

51. DFI received a copy of the settlement between Salick and Nations but noted that the agreement did not address the violations cited by DFI and no other response was given. The Department also received a copy of the settlement between Agena and Nations. Though the Agena agreement did not address the cited violations, Mr. Buff did address such violations in a follow-up letter.

52. DFI responded to Nations attorney Battaglia that, "Prater is one of eight complaints filed with the Department against Nations which triggered an investigation into violations of Chapter 19.146 RCW, the Mortgage Broker Practices Act. That investigation began formally on June 24, 1997, and continues to date."

53. On February 26, 1998, Nations attorney Mr. Battaglia informed Chuck Cross that Nations failed to maintain copies of complaint correspondence delivered to Nations by DFI between July 1995 and October 1996.

54. As part of its investigation of Nations, DFI sent questionnaires to consumers in January and February of 1998. It sent out 371 questionnaires and received 137 responses. Though not a scientific survey, the questionnaires served as an investigative tool. The Statement of Charges summarizes the questionnaire responses as follows:

- a. 53 consumers reported that they had conducted business with Nations from an out of state location.
- b. 120 consumers reported that they had desired only a fixed-rate mortgage (note that 66% of these consumers ended up with an adjustable-rate mortgage).

- c. 85 consumers reported that they had been attracted to Nations based on the promise of a low rate, low cost or low payment loan.
- d. 108 consumers reported that they had met with a Nations representative in their home on one or more occasions to complete the application and/or closing papers. Note that nearly 100% of Nations' loan applications falsely state that the borrower completed the application by mail. The Department believes that Nations marks the application as received by mail in an attempt to confuse the triggering point for required disclosure.
- e. 46 consumers reported that they had not received a Good Faith Estimate Disclosure within the state or federally required time frames.
- f. 48 consumers reported that they had not received a Truth in Lending Disclosure statement within the state or federally required time frames.
- g. 46 consumers reported that they were surprised by the loan costs.
- h. 27 consumers reported that they were surprised at the rate on their loan.
- i. 20 consumers reported that they were surprised to receive an adjustable rate mortgage.
- j. 54 consumers reported that they were surprised by some other element of the transaction.
- k. 72 consumers reported that they were told by Nations that they could change their adjustable-rate mortgage to a fixed-rate mortgage.
- l. 34 consumers reported that they were not given ample time to read their closing papers before signing them.
- m. 51 consumers reported that their questions about the loan were not answered.
- n. 82 consumers reported that the terms of the loan were not what they had expected.
- o. 70 consumers reported that their loan had a prepayment penalty and 51 of those consumers reported that they were unaware that the penalty existed before they signed the closing papers.



- p. 85 consumers reported that their loan did not turn out as they had expected or were promised.

55. As set out earlier, Nations' only licensed location for Washington was the Bellevue office. It received an interim license effective May 30, 1995 and a permanent license effective June 30, 1995. Nations conducted solicitation and telemarketing of Washington consumers out of its California offices. Nations maintained files and processed loans in its California offices. Nations also used its Portland office in handling Washington transactions. Nations conducted business with Washington borrowers from such unlicensed locations from February 19, 1995 through January 31, 1998. Darin Williams was responsible for the actions of Nations' loan officers—Jamie Chisick supervised Darin Williams. Jamie Chisick did not instruct Darin Williams to have Nations' loan officers discontinue their actions of pursuing Washington leads from unlicensed out-of-state locations (Transcript, page 3866). The early matters consisted of 14 transactions originated by Nations prior to May 30, 1995 when it got its interim license. Nations' mortgage broker activity from unlicensed locations continued beyond the time DFI notified Nations that this conduct violated the Act and also after Thurston County Superior Court ordered Nations to comply with the Act as a condition of the Stay, as mentioned earlier. DFI seeks a \$97,800.00 fine against Nations under RCW 19.146.265 for unlicensed branch office violations (assessed at \$100.00 per day for 978 days). It also seeks a \$97,800.00 fine individually against Jamie Chisick.

56. Nations acknowledged that it engaged in unlicensed activity "from time to time", but argued that it did not occur every day.

57. During the June 24, 1997 DFI visit to Nations' Bellevue office, Steve Willis did not provide **trust account information**—he noted he forwarded funds held in trust to California where such matters were handled by Nations' California CPA. DFI thereafter attempted to obtain trust fund information. Nations provided some limited trust account records to DFI on September 17, 1998. Additional records were provided later. The trust funds records provided by Nations covered the period from June 1995 through August 1997.

58. DFI's review of Nations trust fund records revealed Nations was late on trust fund deposits totaling 187 days late. Even though the trust fund deposits were required to be made by the next business day, for purposes of this examination, DFI used a three day rule which worked to lessen the number of days late. DFI thus seeks a \$14,025.00 fine against Nations (calculated at \$75.00 for each of the 187 days the trust funds were deposited late), see Exhibit No. 61. Nations commingled or failed to deposit trust funds on 26 separate occasions, thus DFI seeks an additional \$1,950.00 fine against Nations (calculated at \$75.00 for each of the 26 violations), see Exhibit No. 68. DFI also found 64 separate violations of commingling trust funds with other funds and seeks to impose a \$4,800.00 fine against Nations (calculated at \$75.00 times each of the 64 violations), see Exhibit No. 69.

59. DFI also seeks to impose trust funds fines equaling the \$20,775.00 set forth above individually on Jamie Chisick. Jamie Chisick was not shown by the evidence to have personally participated in or knowingly approved of such wrongful trust funds conduct. Jamie Chisick did not personally supervise the CPA in charge of trust funds.

60. On May 14, 1996, DFI issued a **Disclosure Requirements** interpretive letter to brokers (including Nations). As to the timing of required disclosures, DFI noted that the law required brokers to make all disclosures upon receipt of a loan application and before the receipt of any moneys from a borrower. However, DFI went on to set forth the interpretation that:

"For purposes of consistency with federal law, when no moneys have been received from a borrower, the timing requirements of Truth In Lending and Good Faith Estimate disclosures are considered to be satisfied under the Act if they are given within the three day period following receipt of an application."

DFI also notified brokers, including Nations, that receipt of a loan application is made when the broker accepts from the borrower "in person, or by mail, telephone or some other medium" adequate information for the standard FNMA 1003 application form. See Interpretive Letter, Exhibit No. 47. Nations argued that the trigger should be receipt of a "completed application" which should include not only the signed loan application, but also all documentation including W-2 stubs.

61. DFI seeks a fine of \$64,300.00 against Nations and \$64,300.00 individually against Jamie Chisick for violations of the Mortgage Broker Practices Act disclosure requirements. This figure was calculated by multiplying \$100.00 per day times 643 separate violations between May 30, 1995 and January 1998. . Mr. Cross explained, "How this is derived is we reviewed 643 loans held by Nations and not in a single loan were all the required disclosures made as required under either federal or state disclosure guidelines or requirements." Thus, Nations did not give the required disclosures in 643 loans (this was the case even using DFI's more lenient three day interpretation). Chuck Cross described this fine as "conservative" in that DFI could have counted each disclosure that was not properly made and assessed a \$100.00 fine for each day each disclosure was not made thus resulting in thousands of dollars in fines per single loan file. Instead, DFI chose to assess a single \$100.00 fine per loan file.

62. Also, in the 643 loans reviewed by DFI, Nations did not give Rate Lock Disclosures and follow-up disclosures under RCW 19.146.030(2)(e) and (3). Nations did not give refundable lock-in fees disclosures under RCW 19.1146.030(2)(e). DFI had model disclosure forms available. Nations argued that in the subprime area, the lenders it worked with did not offer locks and the use of DFI's model forms would not work. Nations did not use DFI disclosure forms, nor did it obtain DFI approval to use another form. Nations did not submit such form for DFI approval, but rather takes the position that DFI should have met with Nations as

requested, from time to time, to discuss various compliance issues. DFI's focus was for Nations to comply with DFI requests for records.

63. In the referenced 643 applications, Nations did not give Trust Funds Disclosures or Third Party Provider Reports Disclosures to borrowers. Nations gave such disclosures in 23 of 77 consumer transactions after October 1997.

64. As indicated above, Truth In Lending (TIL) Disclosures and Good Faith Estimate (GFE) Disclosures are triggered by receipt of an application or receipt of money from a borrower. In the majority of its applications, Nations marked them as received by mail when they were typically received in person via a face-to-face interview with the borrower. Nations typically contacted borrowers by telephone and obtained information to be completed in the Federal National Mortgage Association application form. A Nations representative (usually Steve Willis or Scott Johnson) then went to the borrower's residence to complete and/or obtain a signature on the application form. Nations' Bellevue office would then mail the application to Nations' California headquarters. Nations did not provide disclosures within three day from the time its representative in Washington received the application.

65. Nations' failure to provide required disclosures beyond three days continued after the Stay of the TCD was entered September 18, 1997. Such loan files are identified in DFI Exhibit No. 48.

66. In addition to the failures to provide disclosures within the three days, DFI's examination of Nations' files disclosed a total lack of disclosures in some files, i.e., borrower files Burwell, Collins, Sanberg, Grandstand, Kennedy, Kolb, Durias, Albright, Kahn and Medeiros. See Chuck Cross Testimony, pages 7073-7088. In these transactions, Nations originated the loans under its "conditional approval system" and later sold the loans to First Alliance Mortgage Company. Nations argued that this was a "glitch" in their system.

67. Nations used a "Confidential Information Statement" form that sought marital status information. In the section entitled "Former Marriages", Nations requested information as to whether the former spouse is "deceased" or "divorced". These forms were included in the majority of Nations' files.

68. Jamie Chisick is the owner of Nations. Jamie Chisick is also 100 percent owner of Riverview Escrow Company. Riverview Escrow Company was the escrow company used by Nations to provide settlement services on loans originated by Nations in the state of Washington. Riverview Escrow was listed as the escrow company and/or was paid on the HUD-1 settlement statement in 371 closed or pending loan files. Nations referred Riverview to all or nearly all of its borrowers. Nations gave late Affiliated Business Arrangement (AfBA) disclosures in all of the 371 loans. In most cases, the AfBA disclosure was made when the borrower signed closing documents—in some cases, there was no AfBA disclosure in the

borrower's loan file. DFI calculated that the use of Riverview cost borrowers approximately \$350.00 more than closing with a Washington licensed escrow agent.

69. Nations acknowledged that it failed to give the required disclosures in many instances. Jamie Chisick was aware of the importance of timely disclosures, but he "unfortunately" did not take steps to make sure disclosures were timely made. In the Charges, DFI seeks a fine of \$37,100.00 against Nations and a fine of \$37,100.00 individually against Jamie Chisick for violations of subsection (10) of RCW 19.146.0201. This was calculated at \$100.00 for each of the 371 disclosure violations.

#### **(Borrower Testimony—Findings 70 through 101)**

70. **John Salick** and his wife, Carol, received a home-refinance telemarketer call from Nationscapital Mortgage Corp. (Nations) in 1997. They were interested in refinancing because they had an adjustable mortgage and wanted to refinance for a fixed rate. The Salicks did not have any problems with credit. Nations processed the loan. Nations told Mr. Salick that Nations was paid by the lender. The Salicks were to receive a 7 1/2% fixed-rate loan with an approximate \$20,000.00 cash back—they were not told they would need to "buy down" to get that rate.

On April 10, 1997, a Nations representative, "Scott Johnson", came to their house where the papers were signed. The closing appointment didn't take very long because Mr. Johnson "had something else to do" and "had to go somewhere else". Mr. Johnson instructed the Salicks not to date certain documents. Mr. Salick notified Nations and Mr. Johnson of the \$20,000.00 cash back. Mr. Salick placed trust in Nations and did not read all of the documents which he estimates would have taken upwards of three hours (the documents do not reflect the \$20,000.00 cash back).

The Salicks had several conversations with Nations—Mr. Salick recalled talking to a Mr. "Quigley", a "Deborah Heidelmann" and a "Jamie Chisick" after they "got burned for the money". Upon receiving a check that was some \$12,000.00 less than promised, Mr. Salick called Nations and complained. The Truth-In-Lending Disclosure Statement provided by Nations stated that the \$8,305.00 loan origination fee paid to the broker was not paid by the Salicks. This \$8,305.00 broker fee was under the heading of, "**These are FEES NOT paid by the Borrower**". Ultimately, Jamie Chisick called him back and tried to "pacify" him by telling him he was not paying the fee. Mr. Chisick's explanation was not satisfactory to Mr. Salick and he then filed a complaint with the Department of Financial Institutions. Nations refunded the \$12,000.00 approximately a year after the transaction.

71. **Janet Annette Irish** received a telemarketing call from Nations in 1995 about refinancing. Ms. Irish told Nations that she was interested in a fixed low rate debt

consolidation loan (her existing loan was a fixed-rate loan). Nations advised her that it could do that thus she and her husband applied for the loan (Nations representative Steve Willis came to her home and took the application). Mr. Willis gave her an "Estimated Cost Analysis" and explained that she could make a 30-year loan into a 15-year loan by making extra payments—this influenced her to go ahead with the loan. She was told that taxes and insurance would be included in the loan. She was not told that Riverview Escrow would be the escrow company, nor that Nations had an interest in Riverview Escrow.

Ms. Irish expected to get a fixed-rate loan, but was offered a variable-rate loan at closing on August 16, 1995. Nations showed her a letter which she understood to be a commitment for the loan to be processed into a fixed-rate loan after a year as long as four conditions were met. Ms. Irish placed trust in Nations that what its representatives said was true. Despite signing documents saying she received copies of the documents, Ms. Irish was not given copies of closing documents at the time of closing, but was mailed copies which she received later. She did not "convert" to a fixed rate at the end of a year due to penalties she learned would be involved. In February of 1996, Ms. Irish learned that taxes and insurance were not included in the loan. After the first six months, Ms. Irish made additional payments on the loan over and above the payment amount.

Ms. Irish feels Nations misled her and misrepresented loan terms and conditions.

72. **Orval Goede**, of Sumner, Washington, took out a loan brokered by Nations. Mr. Goede's wife was contacted by a Nations telemarketer. They were interested in a fixed-rate loan. A Nations representative came to their home and in presenting an "Estimated Cost Analysis", represented that an adjustable rate would be better for them because interest rates were going down. Nations told him that the loan could be refinanced to a fixed-rate loan if he met certain criteria. Nations told Mr. Goede that taxes and insurance would be included in the loan. The Nations representative also told them there would be no prepayment penalties.

Nations did not fully discuss costs of the loan—Mr. Goede was surprised upon learning of a mortgage broker fee. The Goedes did not receive mortgage documents prior to closing which took place on June 13, 1996. The Nations representative told Mr. Goede that the documents were just "standard form" and Mr. Goede trusted him and signed them, relying on the expertise and integrity of the Nations representative. Mr. Goede even asked about the prepayment penalty and was told by the Nations representative that it was standard procedure to include it, but reassured Mr. Goede that he would not have a prepayment penalty. Nations told him he was signing documents consistent with what had been discussed before. As it turned out, the documents were not consistent with the prior discussions. Though told of a three-day right to cancel and signing as having received copies, Nations did not leave a Right to Cancel Notice at the time of closing.

Mr. Goede later learned that the loan contained a prepayment penalty. He also learned that taxes and insurance were not included in the loan.

73. **Scott Larry Counard** of Vancouver, Washington, was contacted by a telemarketer for Nations about refinancing his home. After asking "a whole bunch of questions" about Mr. Counard's current mortgage, the Nations agent told Mr. Counard that Nations had a company that could beat his mortgage rate and current payments. This prompted Mr. Counard to proceed and on October 6, 1995 he signed the loan application sent to him in the mail.

Mr. Counard had difficulty finding out the terms and costs of the loan from Nations and thereupon canceled the loan. A conversation log from the loan application file reflects Mr. Counard's dissatisfaction and desire to cancel as of October 12, 1995—noting Mr. Counard's desire for a "complete breakdown of fees" the log contains an entry that "Steve said if he starts asking about fees cancel loan". Nations then provided some information over the phone on fees he felt were "quite high" and Mr. Counard thereupon canceled. He did not receive a truth-in-lending disclosure and good faith estimate until after he had already canceled.

74. **Jerry Morris** of Vancouver, Washington, was contacted by Nations about refinancing. Mr. Morris wanted a loan with a lower rate that included property taxes and insurance. A Nations representative, Steve Willis, told him Nations could do this. Mr. Morris then submitted an application dated August 21, 1995.

On the closing date, a "Jamie Chisick" came to his house to handle the closing (On cross-examination Mr. Morris acknowledged that he did not check the person's ID, but the person introduced himself as "Jamie Chisick"). Mr. Morris was upset to discover the loan rate was even higher than the rate he had on his current loan. Mr. "Chisick" told him that Nations could not get him a better rate due to some credit rating problems but that if he took the loan and made payments on time for a year, Nations would convert it to a Fannie Mae loan and get him a better rate. Mr. Morris did not agree so the representative called up Steve Willis who talked Mr. Morris into going through with the loan. Mr. Willis "assured" him that insurance and taxes would be included in his monthly payments.

About three months later, Mr. Morris received a property tax bill and later the insurance bill. He re-read the letter regarding the loan converting after one year and then realized the conversion was not automatic—he was not surprised when the loan did not convert after one year.

After this experience, Mr. Morris did not go back to Nations, but instead refinanced with another company.

75. **William Hines, II**, a self-employed individual from Vancouver, Washington, after calling a number from a flyer, received a call from Steve Willis of Nations. Mr. Hines had a fixed-rate

loan and wanted to refinance to another fixed-rate loan and get some money back to make some improvements and then sell his house. Mr. Willis led him to believe that he could do this for him. Mr. Hines applied for the fixed-rate loan and was led to believe by Mr. Willis all the way through the process that he would get a fixed-rate loan—he first learned at closing that it was a variable-rate loan. Mr. Hines had received some loan documents setting forth an “awful high” broker fee and a higher interest rate than Mr. Willis had quoted, but Mr. Willis advised him not to pay attention to those numbers and that he would be receiving other papers.

The numbers were still high at the April 9, 1996 closing and “Robert”, the Nations document signer, called a “Jamie” in California, who told Mr. Hines to have “Robert” show him how much he would save by going through with the loan. Nations told Mr. Hines that the lender would pay part of the loan costs. Nations also told Mr. Hines that taxes and insurance were included in the loan and that there was no prepayment penalty in the loan. The lack of a prepayment penalty was important to Mr. Hines since he planned to sell his house after fixing it up. The loan papers entered at the hearing include a signed prepayment penalty notice, but Mr. Hines does not remember reading it at the time of closing. “Robert” was in a hurry at closing in that he was already an hour late for another appointment—Mr. Hines felt “rushed” and relied on what he was told and signed documents without reading them. “Robert” also asked Mr. Hines to sign a blank document at closing.

Mr. Hines later learned that taxes and insurance were not included in the loan. He also learned that the loan contained a prepayment penalty, Nations told him the loan would automatically roll over into a fixed-rate loan after one year as long as he met certain criteria—this did not happen. Though told of a three day right to cancel, Mr. Hines does not remember the Nations representative leaving any such papers at closing—instead, he received them by mail close to a week later.

76. **Kim Sinner** of Vancouver, Washington was contacted by Nations about refinancing her home loan from an adjustable-rate mortgage to a fixed-rate loan. She was interested in refinancing to a fixed-rate loan because her rate on her adjustable loan was about to go up. Nations representative Scott Johnson came to the Sinners' home in October 1995 and they completed a loan application. Ms. Sinner informed the Nations representative that she wanted a fixed rate mortgage and to have insurance and taxes included in the mortgage payment. Nations led the Sinners to believe that this could be done. Scott Johnson did not explain charges and fees to the Sinners before closing. Then Scott Johnson and another Nations representative came to the Sinners' home and discussed two credit report matters—Ms. Sinner informed Mr. Johnson that they did not even have a transaction with the one company (Vancouver Furniture). As to the other matter, Ms. Sinner gave Mr. Johnson a document showing that it had been paid.

At the December 9, 1995 closing, the Sinners learned that the loan would not be fixed for the first six months or a year. The Sinners informed Nations that they did not want an adjustable mortgage to which Mr. Johnson responded that they could reduce the term of the loan from 30 to 15 years by paying an extra \$100.00 per month. Mr. Johnson also told the Sinners without mention of cost that after six months to a year of being current and showing good faith the loan would be switched to a fixed-rate loan. Contrary to what Nations had originally told the Sinners, at closing Nations told them the loan would have a prepayment penalty only for a matter of months. It was also at closing that Ms. Sinner was informed of loan fees. The Sinners were also surprised at closing that taxes and insurance were not included in the loan; upon mentioning this to Mr. Johnson, he said he would amend the papers to add taxes and insurance, but he never followed through with this. Nations canceled the closing appointment and then dropped by the next day without notice. This caused the Sinners to be rushed at closing in that Mr. Sinner had to come home to close during his one-half hour lunch break. Mr. Johnson told the Sinners to sign the documents and that he would then explain them to Mrs. Sinner after Mr. Sinner left. Mr. Johnson left right after Mr. Sinner without explaining the documents to Mrs. Sinner and without leaving copies with her.

The Sinners received copies a week after closing. Some of the documents have dates written in by others than the Sinners. Within three months of closing, the Sinners received notice that their interest rate was to be adjusted up. They later refinanced with a different company for a fixed-rate loan and had to pay a \$7,000.00 prepayment penalty.

77. **Lois Talebi** of Kirkland, Washington, was contacted by Nations about refinancing in 1995. Ms. Talebi was interested in refinancing in order to consolidate her debts and get some cash back—she already had a 7.5% fixed-rate loan and was not interested in a variable-rate loan, which is what Nations representative Steve Willis was promoting. Mr. Willis told her he could save her a lot of money and that at the end of the year, Nations could slide her back into a fixed-rate loan at the same interest rate she was at—Mr. Willis assured Ms. Talebi that he would take care of this for her. She was going to go to her bank, but Mr. Willis told her Nations could get her a better deal than the bank. Nations did not explain anything about a broker fee. Ms. Talebi proceeded with the loan process in August, 1995 for comparison purposes—upon getting information on what Nations was offering, she planned to take the papers to her bank to see what the bank could do. She was not told that Riverview Escrow would be the escrow company.

On September 19, 1995, the day Ms. Talebi signed loan papers (which she understood was still part of the application process), the Nations representative arrived approximately an hour and a half late and was in a hurry to get her signatures on the documents so they could be sent to California. Nations did not advise her that the papers she signed was actually the closing of the loan. She was not even shown the top part of most of the papers she signed. Ms. Talebi signed the papers without reading them, but when she did ask a question, the Nations representative did not answer—he told her he was not familiar with the details and



assured her that Steve Willis would get ahold of her and answer her questions afterwards. Ms. Talebi was not aware she was signing loan papers; if made aware of this, she would have first taken such papers to her bank. The Nations representative did not tell her anything about having a right to cancel, though this was included in the documents Nations had her sign. Some of the documents were notarized by Steve Willis though she never signed such documents in front of Mr. Willis. Riverside later contacted her for more financial documents. Ms. Talebi complied and then even more documents were requested.

Ms. Talebi became frustrated and on or about September 29, 1995 left a message for Mr. Willis to cancel the application to which Mr. Willis replied by phone message that the loan had already gone through and was a "done deal".

Ms. Talebi later refinanced with another company and had to pay a "big" prepayment penalty—she was not aware of a prepayment penalty, though again this was included in the documents Nations had her sign.

78. **Kenneth Raymond George**, a mechanic, and his wife were contacted by Nations in January of 1997 about refinancing their home. Mr. George had two mortgages and some bills he wanted to consolidate and was interested in refinancing at a rate lower than 9.5%. Nations said it could decrease their payments. Nations offered a variable-rate loan with a guarantee that if he made timely payments and met some conditions in one year he could "lock" into a fixed rate that would still be less than what they were paying at that time. There was no discussion as to whether there would be a fee or penalty involved. Nations representative Steve Willis came to their house. Nations did not tell them that Riverview would be the escrow company or that Nations had an interest in Riverview.

The Nations representative showed Mr. George an "Estimated Cost Analysis" and told him he could reduce the term of the loan by making extra payments—this made the loan attractive to Mr. George. The Nations representative did not go over each document with Mr. George at closing.

Mr. George did refinance through Nations to a fixed rate a little over a year later, but the loan did not contain taxes and insurance as they told him it would. This refinance involved a substantial prepayment penalty—this had not been explained to Mr. George in 1997 though one of the documents he signed does mention the existence of a prepayment penalty.

79. **Gerald Slater** of Bothell, Washington, was contacted by Nations in May of 1996 about refinancing his house. Mr. Slater was not initially interested, but did ask the Nations representative if Nations could beat his current 8.4%. Tara, the Nations representative, responded that Nations could beat that rate. Mr. Slater asked what the loan would cost to which Tara responded only that there would be "no out-of-pocket expenses". Mr. Slater thereupon informed the Nations representative that he would consider refinancing if Nations

could get him a fixed rate loan under 8.4% with taxes and insurance included in the loan. He then went through with the application. Mr. Slater expected to get \$10,000.00 cash back in the transaction.

Shortly before the July 10, 1996 closing, a Darin Williams of Nations called Mr. Slater to inform him that he could not get a fixed-rate loan due to a late mortgage payment some four years prior. Mr. Williams "assured" Mr. Slater that in six months if Mr. Slater's debt-to-income-ratio hadn't changed and he hadn't had any late pays, Nations would put him "on a fixed-rate mortgage". Mr. Williams did not tell Mr. Slater that this might include additional costs. This assurance made Mr. Slater think he was going to get the fixed-rate mortgage that he wanted in the first place. At closing, Nations provided a letter from Jamie Chisick on that matter to the Slaters (the letter mentions a 12 month period and stated conditions that must be met before Nations was to submit the matter to lenders for a fixed-rate loan). The letter does not reflect what Mr. Williams actually told Mr. Slater. Mr. Slater did question the 12 month period to which the Nations representative told him not to worry about it.

At closing, the Nations representative "briefly and quickly" went over documents and told them where to sign; while the Slaters looked at the documents, the Nations representative made distracting comments about "unrelated stuff" which made it difficult for the Slaters to pay attention. Nations had Mr. Slater sign a document acknowledging a difference between a final Good Faith Estimate and an initial Good Faith Estimate—Mr. Slater did not receive a Good Faith Estimate (or a Truth-in-Lending Disclosure) prior to closing; he did not notice this on one of the many documents he signed that day and did not question it. Mr. Slater also found out at closing that taxes and insurance were not included in the loan, but at this point he felt it was "just too late in the game to pull out" of the deal. Mr. Slater was also disappointed to get cash back of \$8,961.96 rather than the \$10,000.00 earlier discussed. The Slaters contacted Nations representative Mike Buff who said he would check into it and get back to them, but he did not get back to the Slaters.

Mr. Slater complied with the conditions to convert his loan to a fixed-rate loan as stated in the letter from Jamie Chisick. Mr. Slater contacted Nations and was given the name of a person to talk to. Mr. Slater then learned that it was going to cost him. He did not pursue it further with Nations, but went ahead and refinanced his loan with his current lender and paid a \$2,000.00 prepayment penalty. He knew the Nations-brokered loan contained a prepayment penalty, but this did not initially bother him since he was not expecting to refinance but to instead be put into a fixed rate mortgage as he had been initially assured by Mr. Williams.

80. **Joseph Dobbins** of Snohomish, Washington, was contacted by Nations about refinancing his house. Mr. Dobbins is disabled (legally blind) and receives Social Security Disability. Mr. Dobbins was interested in refinancing his adjustable-rate mortgage to a fixed-rate loan with lower payments. Nations representative Darin Williams told Mr. Dobbins that he could get a fixed-rate loan for him at no more than 7.5% after 12 months as long as Mr.

Dobbins first accepted an adjustable-rate loan and made his loan payments on time. At the end of the 12 month period, the loan was to be changed to a fixed-rate loan and Mr. Williams told Mr. Dobbins that he "will handle that for you. It will be taken care of." Mr. Dobbins would not have gone through with the loan if Nations had not included the 12 month conversion to fixed-rate loan promise. Mr. Williams also told Mr. Dobbins that taxes and insurance would be included in the loan. Mr. Dobbins does not recall being provided documents about loan costs prior to closing. He was not told that Nations owned Riverview Escrow Company—he does not remember even being told that Riverview Escrow would be the escrow company.

Mr. and Mrs. Dobbins signed documents at closing. As indicated above, Mr. Dobbins cannot read. Mrs. Dobbins lacks the ability to comprehend what she reads. Thus, they signed the documents out of trust relying on what the Nations representatives told them. The Nations representative told the Dobbins that in his experience only one person ever read the documents and that was a lawyer. The Nations representative did not fully explain the documents to the Dobbins but said they were just normal papers that you sign for a loan. The Nations representative again assured the Dobbins that the loan payments included taxes and insurance.

After closing, Mr. Dobbins learned that taxes and insurance had not been included in the Nations-brokered loan. He first received a bill from his insurance company. Mr. Dobbins complained to Nations and was sent \$940.00 to cover one year of insurance.

Mr. Dobbins relied on what Nations told him about the loan converting to a fixed-rate loan at the end of one year. This was important to him in that he is retired and disabled and on a fixed income. The adjustable loan payment was to increase from \$1,280.00 per month to \$1,758.00 per month. Thus, after one year of making all payments on time, Mr. Dobbins called Mr. Williams about the conversion of the loan to a fixed-rate loan and Mr. Williams told him it could not be done. Mr. Dobbins kept calling back but without results. Mr. Dobbins then talked to a "Mr. Buff" who told him he would handle the matter, but Mr. Dobbins was not called back. Mr. Dobbins tried to get ahold of Nations several more times but could not get through. Mr. Dobbins contacted an attorney who told him it would cost too much to pursue the matter.

81. **Stanley A. Moffett** of Seattle, Washington, received an unsolicited letter from Nations in October of 1996. Mr. Moffett called the number listed on the letter and talked to a "Steve Kustra". Mr. Moffett was interested in getting \$50,000.00 cash. The Nations representative told Mr. Moffett that this would be an adjustable-rate home loan for one year that would be changed without cost to a fixed-rate loan after one year as long as he met four requirements. Nations told Mr. Moffett the loan would include taxes and insurance. Nations did not tell Mr. Moffett that Nations owned a interest in Riverview Escrow.

At the November 14, 1996 closing, Mr. Moffett learned that the papers contained a \$8,700.00 broker origination fee. He was concerned that this would reduce the \$50,000.00

amount he was to receive, but the Nations representative told him it would not subtract from the \$50,000.00 and not to worry about it—that it was just something they had to put on the papers. Nations told Mr. Moffett that the fees did not come out of his amount, but that Rancho Vista paid the fees to Nations. Mr. Moffett questioned the Nations representative about the loan documents not indicating taxes and insurance to be included and was assured that they were included. Mr. Moffett also asked about the prepayment penalty provision to which the Nations representative told him not to worry about that because it would not apply in this case. Mr. Moffett knew he had three days to rescind during which time he “continuously” called and faxed Jamie Chisick and Steve Kustra to confirm that he would get the \$50,000.00 he was promised. Nations loan officer Steve Kustra provided a letter to him confirming a total cash benefit available of at least \$49,000.00 “put in your ‘pocket’ so to speak”. Mr. Moffett objected to some other provisions about taxes, the increase in his monthly payments and with the conversation to a fixed-rate loan at the end of the year; Mr. Moffett was concerned that Nations had not been honest in its dealings with him. Mr. Moffett complained about these matters and others to Jamie Chisick. Jamie Chisick responded by sending Mr. Moffett a letter agreeing to pay him \$5,000.00 (consisting of \$1,700.00 for 1997 taxes, \$1,000.00 for six months ARM adjustment and \$2,300.00 for costs associated with the switching of his loan). He was not told that there would be any other costs for switching the loan, though Mr. Chisick in his letter agreed that Nations would not charge more than \$1,000.00 in broker fees if he refinanced through Nations. Based on these concessions, Mr. Moffett did not rescind the loan. Jamie Chisick also sent a Settlement Agreement and Release which Mr. Moffett refused to sign.

Instead of the promised \$50,000.00 (or the revised “at least \$49,000.00”) Mr. Moffett received \$42,400.00. Mr. Moffett has since hired an attorney and has filed a lawsuit against Nations.

Mr. Moffett refinanced with a different company and, contrary to what Nations told him, he had to pay a prepayment penalty of approximately \$10,000.00.

82. **Keith Mullins** of Kent, Washington, was approached about refinancing by a Nations telemarketer Roger Beck calling from California. Mr. Mullins indicated that he wanted to consolidate debt, reduce interest and do some home improvements and that he was only interested in a fixed-rate loan. Mr. Mullins also informed Nations representative Steve Willis that he wanted a fixed-rate loan. Mr. Mullins completed the loan application on September 25, 1977. Though the application was taken in person, Mr. Willis checked that it was taken “by mail”. Mr. Willis told him the loan fees would be “about \$3,000.00 altogether”. Mr. Mullins does not recall receiving a good faith estimate or a Truth-in-Lending Disclosure within three days of completing the loan application. Though he did receive them at some point prior to closing but was not sure of the exact date. Also, Mr. Mullins repeatedly requested Nations to give him a copy of the appraisal; Mr. Willis assured that it would be sent to him, but Nations never provided him a copy.

At closing, Mr. Mullins learned that the loan fees were \$8,000.00, which was a surprise to him. He asked about this and Mr. Willis told him that it would be fixed and to go ahead and sign and Nations would "take care of it". Mr. Mullins refused to sign until the matter was corrected. The matter was still not corrected at the second closing appointment. Nations ultimately reduced the brokers fee to \$3,258.00 whereupon Mr. Mullins signed the closing documents on November 18, 1997.

83. **Wesley Germann** of Bellevue, Washington, received a Nations flyer in the mail about refinancing and called the number listed and talked to someone in California. His current loan at the time was a 8.5% fixed-rate, thirty-year loan. He talked to several individuals including Tara, but mostly to Nations representative "Darin" Williams. Mr. Germann told Nations he was interested in refinancing for a 7 to 7.5% fixed-rate, thirty-year loan with \$20,000.00 cash back to build a garage. Nations ran a credit check on Mr. Germann on January 13, 1998 and did not initially indicate any problems to Mr. Germann. It was not until a week to a week-and-a-half before the February 20, 1998 closing that Nations notified Mr. Germann that he did not qualify for a fixed-rate loan under a point system used for credit. Mr. Williams said that Nations could get him another type of mortgage at a higher rate for a year and that if he made timely payments during the year, he would qualify for the fixed-rate loan. Mr. Germann had submitted the loan application on or about January 22, 1998. Mr. Germann acknowledged receiving a Truth-in-Lending Statement within three days of his application, but did not specifically recall receiving other loan documents prior to closing, though acknowledged he may have.

At the February 20, 1998 closing, Nations representative "Scott" Johnson came to Mr. Germann's home and the closing papers were signed. Someone other than Mr. Germann or his wife put some signature dates on some of the documents. The Nations representative told Mr. Germann, "I think you could do better." Mr. Germann reconsidered and cancelled the loan within the three day cancellation period. He later refinanced with another company and "had no problem at all" for a thirty-year, fixed-rate loan at the interest rate less than he was paying before.

84. **Joan Thompson** office manager for a civil engineering and surveying firm, of Bellevue, Washington, was contacted by Nations by telephone about refinancing in January or February of 1997. Ms. Thompson gave Nations information over the phone. Nations filled out an application which was later presented to Ms. Thompson at her home by Nations representative Steve Willis for signature—the application is dated February 15, 1997 though Ms. Thompson did not put the date on the document. She did not mail the application but it was taken by Mr. Willis. The box on the application signifying that it was taken "by mail" was checked, rather than "face to face interview" or "by telephone". Ms. Thompson discussed obtaining a fixed-rate loan. Nations did not discuss broker fees or the cost of the loan with Ms. Thompson prior to closing.

2883<sup>15</sup>/<sub>38</sub>

The Nations representative was late for the March 12, 1997 closing and was "a little hurried" and only "very briefly" reviewed the documents with Ms. Thompson. He presented the "stack" of documents "and he just went through and had us sign them, you know, one right after the other." Some of the documents she and her husband signed contain a signature date written by someone else. At or near the end of the stack of papers was the Truth-in-Lending Disclosure which listed under the heading of "**These are FEES NOT paid by the Borrower**": **BROKERS FEE of \$6,905.00.** Ms. Thompson asked the Nations representative about this and was told it represented the interest paid in the first year and that the \$6,905.00 would be refunded to her at the end of the first year if she did not refinance within that first year. Ms. Thompson believed the Nations representative and relied on what he told her.

Contrary to what Nations told Ms. Thompson, Nations did not refund the \$6,905.00 as promised at the end of the year. Ms. Thompson feels Nations did not tell her the truth and misled her.

85. **Sharon Shoop**, caregiver for a disabled husband, of Sedro Woolley, Washington, was contacted by Nations by a flyer in the mail. Ms. Shoop called the number on the flyer and talked to Nations representative Tanya Mango who took her application over the phone. Ms. Shoop had an adjustable-rate loan and told Nations she wanted a fixed-rate loan. Ms. Shoop told Nations that she did not have a good credit history due to her husband's disability and medical bills. Within the next week, Nations representative Steve Willis showed up at her home on August 24, 1995 with a typewritten loan application for her signature. The amount of the loan the Shoops were seeking was \$208,335.00. Ms. Shoop "explicitly expressed" that they "needed" a fixed-rate loan since they could not pay the escalating payments of an adjustable-rate loan—Mr. Willis responded, "No problem". Based on the information from Nations, the Shoops expected to get about \$11,000.00 cash back. Mr. Willis gave her a good faith estimate which listed closing costs of \$5,203.00.

The loan process continued into the next month during which time Nations and Ms. Shoop were in regular contact—there was no mention of any problems. Sometime in September 1995, Tanya notified the Shoops that the loan was approved.

Just before closing, Mr. Willis notified the Shoops that they would first have to go with a two-year adjustable mortgage that would then convert to a fixed-rate loan. Based on the assurance of Mr. Willis that the loan would convert without having to go through a loan process again, the Shoops proceeded with the loan.

On October 7, 1995, Mr. Willis went to the Shoops home with the closing loan papers. Ms. Shoop noticed the broker fee had increased to \$10,000.00 something". The Shoops questioned this and no explanation was given except that Mr. Willis assured the Shoops that the \$10,794.00 was only an estimate and that the previous figure of \$5,203.00 "would stand". Nations did not explain why the broker fee had doubled. The Shoops also questioned the

prepayment penalty provision to which Mr. Willis replied, "More than likely, there would not be a prepayment penalty fee." Based on the representations of the Nations representative, the Shoops signed the closing papers.

The Shoops were then surprised to receive cash back of only \$1,058.00. The Shoops also received notification that the loan costs remained at the \$10,794.00 figure contrary to the assurance given by Mr. Willis. The Shoops then complained directly to Jamie Chisick.

The Shoops later had to pay a \$9,886.98 prepayment penalty when they refinanced their home in 1997.

The Shoops wrote a letter of complaint to the Office of the Attorney General of the State of Washington against Nations.

86. **Joe Edward Todd** of Carnation, Washington, was contacted via telephone by Nations about refinancing in 1996. Mr. Todd was interested in refinancing to pay off some bills, but only in a 30-year fixed-rate loan and was told by Nations that Nations should be able to get that for him. Mr. Todd signed a loan application dated July 23, 1996. Nations later told him he only qualified for a variable-rate loan but assured him that he could convert it to a fixed-rate loan after 12 months if he made timely payments and met three other conditions—if not for the assurance that the loan would convert to a fixed-rate loan, Mr. Todd would not have gone through with the loan. Along with this fixed-rate conversion assurance, Nations told Mr. Todd that there would be no prepayment penalty. Nations did not disclose to Mr. Todd that Nations had an ownership interest in Riverview Escrow Company. Nations' broker fee was estimated at \$7,920.00.

The loan was closed on August 30, 1996. Mr. Todd objected to the projected rapid increases in payments to the "closer" and was "getting ready to show him the door" when Mr. Todd was directed to talk to a "Todd Arnold", a Nations representative in California, who assured Mr. Todd that the increases only represented a "worst-case scenario" that would occur only if the "economy tanks" and that he would not be charged those rates. Even though the loan papers mentioned a prepayment penalty, Mr. Arnold told Mr. Todd that as long as he let the loan "mature" for 12 months, he would not be charged a prepayment penalty, that it would be "waived". Mr. Todd relied on these representations including the 12-month conversation assurance and signed the loan documents. Mr. Todd also complained that the broker fee was increased without notice from \$7,900.00 (pre-closing) to \$11,605.00 (at closing). Another call was placed to "Todd Arnold" who explained only that costs had gone up. The Nations "closer" also used an Estimated Cost Analysis as a sales tool.

Mr. Todd's interest rate kept going up during the first 12 months even though the economy did not "tank". Mr. Todd complied with the fixed-rate conversion conditions and called Nations to convert to a fixed-rate loan. Mr. Todd repeatedly called Nations, but Nations

did not respond. At one point Nations told him Mr. Arnold no longer worked for the company. Mr. Todd asked to speak with the supervisor and was given the name of Darin Williams, office manager. Mr. Todd tried repeatedly to speak with Mr. Williams but Mr. Williams never returned his calls. Mr. Todd then placed calls directly to company president Jamie Chisick but was told too that he was not available. Mr. Todd left voice mail messages for Jamie Chisick, but Jamie Chisick never responded to the voice mail messages.

Mr. Todd then went elsewhere and refinanced and was charged an \$8,900.00 prepayment penalty despite Nations' assurance that he would not have to pay a prepayment penalty. Mr. Todd got a 7% fixed-rate 30-year loan from Seafirst Bank without any problems.

87. **Rick Feser** of Renton, Washington, was contacted by a Nations telemarketer about refinancing his home loan. Mr. Feser indicated an interest in doing so to consolidate debt and obtain lower monthly payments and was told this would not be a problem. Nations representative Steve Willis then contacted Mr. Feser. An adjustable-rate mortgage (ARM) was discussed. Mr. Willis told Mr. Feser that it would be "no problem" to convert from the ARM to a fixed-rate loan in one year with no fees. Thus, Mr. Feser proceeded with the process and signed an application on February 28, 1997. During the loan process, Mr. Feser was not aware that Nations was a broker, but thought Nations was the lender.

Mr. Feser next received an envelope postmarked March 17, 1997 with documents including a Good Faith Estimate (GFE) and Truth-in-Lending (TIL) statement each dated March 7, 1997. Mr. Feser did not receive any other GFEs or TILs prior to closing.

At the March 25, 1997 closing, Nations confirmed that the ARM would convert to a fixed-rate loan at the end of a year without fees. Mr. Feser did not notice the prepayment penalty clause in the March 7, 1997 TIL or the TIL he signed at closing.

At the end of a year, Mr. Feser inquired about the conversion to a fixed-rate loan and was advised that the loan did not provide for such conversion.

Mr. Feser relied on Nations' truthfulness during the loan process and later learned that Nations deceived him.

88. **Robin Hipol** of Renton, Washington, was contacted via telephone by Nations about refinancing. At the October 14, 1995 meeting with Steve Willis, Mr. Hipol told Mr. Willis that he wanted a fixed-rate loan equal to or lower than his current rate in refinancing his \$85,000.00 mortgage and getting \$20,000.00 cash back to do some work on the house. Nations also showed Mr. Hipol an "Estimated Cost Analysis" to show how he could shorten the term of the loan, which Mr. Hipol later found to be misleading.



Nations sent Mr. Hipol a GFE and TIL by mail postmarked October 31, 1995. He thereupon called Nations because of the interest rate that was "much higher" than discussed and because the loan amount was more than he expected. Nations responded that they were only estimates. Mr. Hipol understood he was being offered a fixed-rate loan—this is what he and Nations had been discussing and one payment amount was listed on the TIL. Mr. Hipol does not recall if he noticed the "variable-rate feature" checked on the TIL—if he had noticed it he would have discussed it with Mr. Willis. As indicated above, he and Nations had settled the discussions on a fixed-rate and "it was definitely fixed". The TIL also provided that there would be no prepayment penalty.

At the November 22, 1995 closing, Mr. Hipol first learned that he was not getting a fixed-rate loan—Nations representative Steve Willis told Mr. Hipol that he had to go with a ARM to get the interest rate he wanted and that after the first year the loan would then "roll over" to a fixed-rate loan at the then-existing interest rate. Mr. Willis told Mr. Hipol that his loan payment included taxes and insurance and Mr. Hipol "took his word at it". Though Nations presented forms containing prepayment penalties, the Nations representative told him that he would not be charged a prepayment penalty. On cross-examination, when asked why he and his wife went through with the loan, Mr. Hipol explained that it was "because we're not financial wizards, we pretty much took Steve Willis on what he explained to us".

In February of 1996, Mr. Hipol got a late notice from the insurance company and thereupon learned that his loan did not included taxes and insurance contrary to what Nations told him.

Mr. Hipol refinanced his loan a little over a year later and found out that he was being charged a prepayment penalty of some \$4,000.00 to \$5,000.00.

89. **Heidi Monroe** of Coupeville, Washington, received a flyer from First Alliance Mortgage about a home loan. Ms. Monroe was interested in a home equity loan to pay off some credit card debt thus she called First Alliance. The First Alliance person took her phone number and said someone would call her back. Ms. Monroe then received a call back from Steve Willis who she later found out was from Nations. Ms. Monroe told Mr. Willis that she did not want to refinance because she had a 7% fixed-rate loan but that she would be interested in a home equity loan for approximately \$15,000.00. Ms. Monroe submitted a loan application to Nations representative Katrina Budde on September 22, 1995—the initial disclosure statements to Ms. Monroe were dated September 28, 1995. The TIL listed a broker fee of \$3,445.28 and a loan origination fee of \$1,435.00.

Ms. Monroe expressed concern about the variable rate to which Mr. Willis responded that everything was okay because it was an election year and that interest rates would probably not increase and might even decrease. Mr. Willis assured her that she could refinance with a "Fannie Mae fixed low-interest rate" in a year if she met certain conditions

including making timely payments. Mr. Willis had told her this would not involve additional costs. Ms. Monroe expressed concern about the loan amount being \$144,000.00 and the amount being financed being \$133,000.00. Nations told her that it was a tax deductible prepaid loan origination fee and that she could get most of it back.

Ms. Monroe placed her trust in Nations and relied on the assurances she was given by Nations. Thus, she went through with the loan.

Ms. Monroe ended up paying \$9,360.00 in broker's fees. No written explanation was given to her for the large increases over the initial costs.

Ms. Monroe contacted Nations to get the fixed-rate loan at the end of the year, but was told that she could not do so because of a late payment on the loan. However, she was able to refinance with another lender to a fixed-rate loan—at this time she found out that she had to pay a prepayment penalty. She did not notice such provisions in the loan documents she signed and this had not been made clear to her.

Ms. Monroe's experience with Nations was that Nations did not keep its promises. She complained about the above to Michael Buff at Nations noting that Nations had not been truthful with her. Mr. Buff initially said the paperwork looked fine, but when Ms. Monroe persisted, he said he would talk to Jamie Chisick. Jamie Chisick authorized a settlement and Nations refunded \$3,000.00 off the increased broker fee to Ms. Monroe. Ms. Monroe expressed concern about signing the Settlement Agreement and Release and was told not to worry about it and that it was "non-binding".

90. **Michelle Miller** of Kenmore, Washington, received a Nations telemarketer call about refinancing during the week of May 21 to 27, 1995. Interest rates had been decreasing and Ms. Miller was interested in refinancing their first and second mortgages (10.75% and 11.3% respectively) to a fixed-rate loan lower by at least two percent, paying off some credit card debt and consolidating bills—she wanted a fixed-rate loan for \$90,000.00 to \$95,000.00.

Nations representative Steve Willis went to the Millers' home the following week on May 31, 1995 and took Ms. Miller's application. Though the loan application was taken via a face-to-face interview, Mr. Willis checked that the application was taken "by mail". Ms. Miller told Mr. Willis she was only interested in a fixed-rate loan to which Mr. Willis advised Ms. Miller that he thought he could get them a 9.6% loan. Mr. Willis told Ms. Miller that the loan origination fee is "usually one or two percent of the total loan".

Nations then mailed Ms. Miller a GFE and TIL each dated June 7, 1995 (7 days after the application was taken). Ms. Miller asked Mr. Willis about the 11.5% interest rate set forth in the documents to which Mr. Willis responded that it was just "preliminary" and he was still working on it and that it was not the "final" rate. The same response was given to her

questions about the amounts listed for loan origination fee, the brokers' fee and the total loan amount. Ms. Miller also questioned the variable rate because she wanted a fixed-rate loan (this had been Ms. Miller's parents' house and Ms. Miller planned to live in the house for the rest of her life and wanted a fixed-rate loan that would be paid off by retirement). Mr. Willis told her the variable-rate loan was the better way to go because interest rates were dropping. Mr. Willis further assured her that Nations could rewrite the loan to a fixed-rate loan in three years at no extra cost except for a filing fee. Ms. Miller raised questions about the figures upon receiving more documents and mentioned she and her husband might not go through with the loan to which Mr. Willis responded that he would get them \$10,000.00 cash back. The Millers decided to at least wait and see the final papers and then decide. The Millers were not provided any additional papers until closing.

The June 26, 1995 closing took less than 30 minutes in that Mr. Willis was "in a hurry to get to another appointment". Mr. Willis did not explain all documents to the Millers. He reminded the Millers several times that he was late for the other appointment. Ms. Miller did not receive the final GFE until closing. The GFE presented at closing provided for a broker fee of \$10,780.00—the previous broker fee was listed at \$6,160.00 by Quality Mortgage and \$4,208.11 by Nations. Nations did not explain the broker fee increases. Mr. Willis told them they weren't really paying that high of a broker fee due to the money they were getting back on the loan. When Ms. Miller questioned the prepayment penalty, Mr. Willis told her it would not bother her since she was planning on staying there.

As a result of her complaints to Mr. Willis about the "charges and the broker charges", Ms. Miller later received a refund of \$1,825.00.

Ms. Miller later refinanced with another company and had to pay a prepayment penalty of \$6,000.00.

91. **Shirley Payne** of Tacoma, Washington, was contacted by "Carmen" of Nations about refinancing. Ms. Payne indicated an interest in a lower interest rate and "Carmen" told her that Nations had a "special program" and for her to submit an application to see if she qualified (Ms. Payne later found out that the "special program" was a one-year ARM that converted to a 30-year fixed-rate loan after one year). Nations advised Ms. Payne that there would be no additional costs and that all she needed to do to convert was call Nations. Nations representative "Darin Williams" came to Ms. Payne's home and took her application face-to-face though he marked the application as having been taken "by mail". At this application meeting in July of 1996, Mr. Williams told Ms. Payne that the interest rate would be from 5% to 6.8%, plus "points". Ms. Payne asked for an explanation of "points" but was not provided one. "Carmen" of Nations later called and informed Ms. Payne that she qualified for the "special program".

On August 26, 1996, Nations representative "Scott" went to Ms. Payne's home for closing. "Scott" was in a hurry at closing in that he had "another person to see" and spent 15 to 20 minutes with Ms. Payne. "Scott" had Ms. Payne date the closing document August 25 even though the actual date was August 26, 1996. He did not tell Ms. Payne the cost of the loan. Ms. Payne was led to believe taxes and insurance were included in the loan. "Scott" told Ms. Payne that the interest rate might fluctuate (though unlikely) and that at the end of the year when she converted to a fixed-rate loan, the interest rate would be no more than 6 to 6.8%. "Scott" did not clearly explain "points" though he told Ms. Payne that the "points" would not be substantial. Nations' explanation of the documents was not complete—Ms. Payne "felt silly, you know, like he knows what he's doing, he knows what's required, so I proceeded". She "trusted" "Scott" in that this was his area of expertise, not hers. Ms. Payne did not even know the loan contained a prepayment penalty provision at the time of closing. "Scott" did not leave any documents, including the Right to Cancel, with Ms. Payne when he left the closing, but Ms. Payne was mailed copies of said documents after closing.

Ms. Payne was later "shocked" upon receiving a property tax statement advising her that she owed some \$1,300.00 in property taxes—she thereupon learned that property taxes had not been included in the loan.

After nine months Ms. Payne called Nations about converting the loan to a fixed-rate loan and was told she needed to call back at the end of the year. At the end of the year she called Nations as instructed and "continued to call and received no response"—she called Nations "many times" and left "many messages". Ms. Payne then refinanced with another lender and had to pay a prepayment penalty of \$4,000.00.

92. **Howard Martin Mansfield**, retired contractor of Tacoma, Washington, was contacted by Nations by mail about refinancing. Mr. Mansfield was interested in refinancing some rental property at the time in that a balloon payment on his current loan was coming due—he thereupon told Nations he wanted a fixed-rate loan. Mr. Mansfield applied for a loan through Nations on or about May 30, 1996 when Mr. Willis of Nations came to his house. Mr. Mansfield repeated that he wanted a fixed-rate loan and that he wanted about \$20,000.00 cash back to which Mr. Willis responded, "no problem". Nations did not tell Mr. Mansfield about a broker's fee or explain the cost of the loan though Mr. Willis told Mr. Mansfield that there would be "some costs but it would not be very much". Nations did not disclose that Riverview Escrow Company would be the escrow company or that Nations had any ownership interest in Riverview Escrow Company prior to the time of closing.

Mr. Mansfield did not receive any loan documents prior to the time of closing. When Mr. Willis came to Mr. Mansfield's home to close the loan, Mr. Mansfield "happened to catch" that the loan being offered was a variable-rate loan, which he rejected. It had been discussed that Mr. Mansfield only wanted a fixed-rate loan. Mr. Willis promised to "straighten out" the paperwork to make it a fixed-rate loan. When Mr. Willis returned on June 19, 1996, Mr. Willis

"had to get out of there" and wanted Mr. Mansfield to sign the documents "real quick". Mr. Willis told Mr. Mansfield that he was getting a fixed-rate loan and would be getting approximately \$20,000.00 cash back. Mr. Mansfield trusted Mr. Willis and accepted that he had "straightened out" the matter; thus, Mr. Mansfield went ahead and signed the documents "real quick" without reading much of the contents thinking he was getting a fixed-rate loan. Unbeknownst to Mr. Mansfield, the loan papers were actually for an adjustable-rate mortgage. Nations did not tell Mr. Mansfield that the loan contained a prepayment penalty, though the documents contained such provisions. Nations presented an Estimated Cost Analysis to show how the loan could be paid off early.

Nations did not provide a copy of the appraisal to Mr. Mansfield until after Mr. Mansfield "raised hell" with Nations for about a month and a half.

Approximately a month after closing after having made calls to Nations, Mr. Mansfield received cash back of \$13,000.00—he had not been told of the \$6,755.00 mortgage broker fee.

Mr. Mansfield did not discover that he had received a variable-rate loan until he received notification that his mortgage payments were increasing.

Mr. Mansfield called Nations every day for two weeks to complain, but Nations never called him back.

Mr. Mansfield ended up having to sell this rental property when the variable-rate payment became too high that the property was not bringing in enough to cover the payments. He had to pay a prepayment penalty.

Mr. Mansfield points out that Nations misled him to believe he was getting a fixed-rate loan and deceived him as set out above.

93. **Phyllis J. Beall** of Gig Harbor, Washington, heard of Nations and in September of 1996, she called Nations about refinancing. Ms. Beall already had a variable-rate loan and notified Nations representative Steve Willis that she would only be interested in refinancing into a fixed-rate loan—that she wanted an 8.9% fixed-rate loan. Mr. Willis told Ms. Beall that he'd see what he could do. Nations sent a representative to Ms. Beall's home on or about September 2, 1996 and took Ms. Beall's application. The Nations representative said he thought Nations could get Ms. Beall the fixed-rate loan she wanted. Ms. Beall does not remember being told that Nations had an ownership interest in Riverview Escrow Company. Nations did not inform Ms. Beall that it was a mortgage broker or that she would be charged a mortgage broker fee—Nations did not tell her about the cost of the loan. Nations told Ms. Beall that she would receive \$13,000.00 cash back, which she wanted to pay some bills and

make some improvements on her home. Nations did not provide Ms. Beall with the HUD Booklet.

At the October 23, 1996 closing of the loan, the Nations representative who came to Ms. Beall's home told her three or four times that he was in a hurry to pick someone up at the airport and that he would go through the documents very quickly. Ms. Beall explained, he **"was rushing me so fast"**. He did not explain each document to Ms. Beall. Nations did not give her time to read the documents. Ms. Beall did ask a few questions and the Nations representative **"sort of slid over them"**. Nations did not tell Ms. Beall that there was a broker fee (\$8,305.00). The Nations representative did assure Ms. Beall that she was getting the promised 8.9% fixed-rate loan and that the reference to "variable" rate in the papers was merely to show that she had the option of getting a variable-rate loan. The 8.9% fixed-rate loan was also confirmed on the day of closing by Steve Willis via phone. Nations also had a piece of paper on top of the loan papers that contained the 8.9% fixed rate. Ms. Beall was only willing to accept a fixed-rate loan and would have refused a variable-rate loan had she known this is what Nations was offering. Ms. Beall put her trust in what Nations told her and signed the loan papers.

Ms. Beall received her cash back check and Settlement Statement late on a Friday afternoon—she thereupon learned that she got \$4,000.00 cash back rather than the \$13,000.00 Nations told her she would receive (she had not been made aware of the significant mortgage broker fee charged by Nations). She immediately tried to get ahold of Steve Willis but was unsuccessful. She reviewed the loan documents with her brother and discovered that she got a variable-rate loan. Ms. Beall realized that she had "been taken" and thereupon sought out Steve Willis to cancel to which Mr. Willis told her it was too late to cancel. She also tried to cancel by calling a Mr. "Chismick" at the Nations California office whom she believed to be an attorney for Nations, but he did not help. Ms. Beall hired an attorney to assist her in the matter. Though Nations denied any wrongdoing, it agreed to return \$4,500.00 to Ms. Beall and the matter was thus settled.

Ms. Beall's payments went up on the Nations-brokered loan. She then refinanced with another lender at a fixed-rate loan.

94. **Kenneth Peterson**, a truck mechanic from Tacoma, Washington, heard about Nations through a flyer or newspaper advertising fixed-rate loans. Mr. Peterson had a 7% fixed-rate loan and had taken out a second mortgage to remodel the house to accommodate seven foster children that he and his wife had—he was interested in refinancing to finish the remodeling and get back to one fixed-rate mortgage. He called the listed number and got ahold of Steve Willis and told Mr. Willis that he wanted a fixed-rate loan at a rate of about 8%. Mr. Willis took application information by phone and Mr. Peterson signed the application on August 28, 1996. The credit report in the Nations loan file is dated August 21, 1996. The Petersons did not have any credit problems—they were told that they did not qualify for a

fixed-rate loan . Mr. Willis told the Petersons that Nations "had a fixed-rate loan available that he could fix us right up with". Mr. Peterson asked that taxes and insurance be included in the loan. Mr. Peterson was strictly interested in a fixed-rate loan and would not have agreed to an ARM.

Mr. Peterson did not recall receiving loan documents in the mail prior to the time of closing though he acknowledged he and his wife signed a loan document dated September 17, 1996. Nations did not disclose the costs of the loan prior to closing—in fact, despite signing documents stating the contrary, Mr. Peterson understood that Nations was the mortgage company and was not even aware that he was dealing with a mortgage broker.

At the September 24, 1996 closing, a "fellow from California" came to the Petersons' home. The Nations representative said he just flew in from California and had to get back home that night to meet with his dad and that he had two or three other document signings to do that day. Mr. Peterson told the Nations representative that he did "not understand any of this stuff". Mr. Peterson asked the Nations representative whether he was there to help them or whether he was there to work for the mortgage company to which the Nations representative replied that he was there "to help" the Petersons understand the loan documents. He confirmed to the Petersons that the loan "is a fixed-rate" loan that could adjust one time in the first year a maximum of one point and that it would be fixed for the duration of the loan. Mr. Peterson accepted this assurance and decided he "could live with that". Based on the assurance that the loan was a fixed-rate loan with the one-time adjustment, the Petersons signed the loan without understanding that the loan papers were actually for an ARM. The Petersons placed their trust in the "real personable, nice, pleasant, very friendly person" from Nations and relied on his honesty and did not read the loan documents before signing. Though there was a prepayment penalty during the first five years, Mr. Peterson did not see such provision; in any event, this was not a concern to the Petersons since they thought they were getting the loan they wanted and did not plan to refinance during such period.

The Petersons then learned that the Nations-brokered loan was actually an ARM with an initial interest rate of 8.9% (and had risen to 12% at the time of the hearing).

Mr. Peterson did not understand the papers he signed. Mr. Peterson also learned that taxes and insurance were not included in the loan upon receiving a property tax statement saying that they owed property taxes. Thus, the existence of a prepayment penalty became an issue—the Petersons learned that they would have to pay a \$7,000.00 prepayment penalty.

Steve Willis told the Petersons that they had to keep the loan for one year and could then apply for a "Fannie Mae" loan.

95. **Barry James Marques**, a Boeing parts inspector from Tacoma, Washington, was contacted by Nations via telephone in 1996 about lowering his interest rate. Mr. Marques had a fixed-rate loan at the time, but was interested if he could lower his interest rate and get some money back to do some work on the house. Nations took his application by telephone. Then, a "Scott" came to Mr. Marques' house where Mr. Marques signed the application. The application is dated June 27, 1996 though Mr. Marques does not know who dated it.

Mr. Marques expected loan costs would be \$1,000.00 to \$2,000.00 and when he asked Nations about the cost of the loan, **Nations did not give him a direct answer—Nations "didn't tell me anything, they just kind of changed the topic"**. Nations did not tell him that Riverview Escrow would be the escrow company or that Nations had an ownership interest in Riverview Escrow. Nations gave him an Estimated Cost Analysis.

The Nations document singer/closer showed up an hour or two late for the July 26, 1996 closing appointment and told Mr. Marques that he had another closing or something to do later than evening. Nations offered Mr. Marques an ARM and told him it was the "best deal" for him. He was told that the interest rate could go up or down. Nations told him he could "switch" to a fixed-rate loan at the end of a year if he made his payments on time and that all he had to do was to "call them and they'd switch me over to a Fannie Mae or a Freddie Mac". The Nations closer presented the documents to Mr. Marques for signature without explanation. As described by Mr. Marques:

"...there was so much paperwork, you know, we went through it so fast and it wasn't really explained, nothing was explained, I was left to read it by myself and ask any questions. And not having any legal background, it's kind of hard for me to understand, so I just went ahead and signed everything off, thinking they were in my better judgment."

Mr. Marques asked several times how much Nations was charging him for the loan **"...and every time they tap-danced around and changed the subject."** Upon specifically asking about the \$7,105.00 Broker Origination Fee listed on the TIL, the Nations closer told Mr. Marques that was the amount he would have to pay if he paid off the loan in the first year. This was the only "prepayment penalty" Nations told him about. The documents reflect that the Broker Origination Fee actually increased from an estimated \$6,305.00 to the above \$7,105.00 amount without explanation from Nations—as indicated above, Nations did not even explain to Mr. Marques that he would have to pay a Broker Origination Fee. As indicated above, Mr. Marques trusted Nations and signed the loan papers.

While Mr. Marques had the Nations-brokered loan, he noticed that interest rates in the economy were going down, but the interest rate on his Nations-brokered loan kept going up—Mr. Marques believed Nations misled him. After one year, Mr. Marques contacted Nations to "switch" to the fixed-rate loan as he had been told by Nations. Nations did not



return his calls. Nations finally returned a call later and told Mr. Marques that he would not be switched to a fixed-rate loan, but that he would have to apply for a new loan.

During the three years he had the Nations-brokered loan, his interest rate kept going up to the point that he "couldn't handle the house payments anymore". He finally refinanced with another company and got a fixed-rate loan.

96. **Susan D. Stockbridge** of Tacoma, Washington, either received a flyer or otherwise learned about Nations and thereupon called Nations in August 1997 and talked to Nations representative Steve Willis about refinancing. Ms. Stockbridge advised Steve Willis that she was interested in refinancing to consolidate a first and second mortgage to a fixed-rate loan. Steve Willis took her loan application over the phone. Prior to closing, Nations did not notify Ms. Stockbridge that Riverview Escrow Company would be the escrow company or that Nations owned an interest in Riverview Escrow Company. Also, Ms. Stockbridge does not recall being told prior to closing what the costs of the loan would be.

When Nations representative Scott Johnson came to Ms. Stockbridge's home the first time for closing, Ms. Stockbridge "caught" that it was an ARM. Scott Johnson could not answer why it was not the fixed-rate loan previously discussed. Scott Johnson called someone who said she did not qualify for the fixed-rate loan because her husband was self-employed. Another question came up about the loan origination fee that Scott Johnson could not answer and Ms. Stockbridge refused to go any further on the loan. Scott Johnson did tell Ms. Stockbridge that she could go to the fixed-rate loan after 11 months if she met certain conditions. Within the next couple days, Nations representative Steve Willis told Ms. Stockbridge that the only fee for the conversion would be a \$75.00 drive-by appraisal. Based on the Nations assurances, Ms. Stockbridge figured she could handle those payments for 11 months before converting to the fixed-rate loan—she agreed to go through with the loan and Scott Johnson returned to her house for closing on October 13, 1997. As to the projected increases in monthly payments on the TIL, Scott Johnson told Ms. Stockbridge that the rates were based on an index that had never increased during his entire term of employment with Nations, thus her monthly payments "most likely would not increase" and that the projections were "just a worst-case scenario". Based upon the Nations' representations, Ms. Stockbridge went through with the loan.

Six months after closing, Ms. Stockbridge's loan payments increased "exactly like the schedule said". In view of the assurances from Scott Johnson, this surprised Ms. Stockbridge. She thereupon called the company holding her loan at that time and was told that her interest rate "was guaranteed to go up every six months until it hit 18 percent" (note actually lists top rate at \$16.5%). Ms. Stockbridge later got a call from Scott Johnson, who had gone to another company as of that time. Scott Johnson told her that she "got screwed" and offered to get her refinanced through him, but she and her husband wanted nothing more to do with him or Nations due to having been "lied to".

Ms. Stockbridge then went to another company to refinance and got a 6.75% fixed-rate loan without problem. There were no increases in household income and her husband was still self-employed.

97. **Judson Forks**, a printing pressman from Federal Way, Washington, was contacted by Nations a few days after he had called another company from a leaflet he received in the mail. Mr. Forks told Nations he was interested in refinancing to reduce his interest rate and to get \$10,000.00 cash back to remodel his home. His current interest rate was 8 1/2% but was about to increase. Mr. Forks was interested in a fixed-rate loan. The Nations representative did not ask Mr. Forks for any personal financial information at such time. The Nations credit report on Mr. Forks is dated June 30, 1996 and lists a June 26, 1996 inquiry by First Alliance Mortgage. The Nations representative said he thought Nations could help him.

Scott Johnson from Nations then came to Mr. Forks' home and completed the loan application and got some releases. The loan application is dated July 3, 1996. Mr. Forks told "Scott" he wanted a fixed-rate loan with \$10,000.00 cash back. Nations did not discuss with Mr. Forks how much the loan would cost. "Scott" told Mr. Forks that he could offer a ARM for a year during which time if Mr. Forks made his payments on time and didn't incur additional debt, Nations would set him up on a 30-year fixed-rate loan at the "going rate". If Mr. Forks stayed with Nations, he would not have to reapply for a new loan and there would be no costs in going to the fixed-rate loan.

During the phone call when the closing appointment was scheduled, Mr. Forks mentioned that his attorney would be at the closing (Mr. Forks wanted his attorney present because he doesn't really understand the paperwork). Nations then called and canceled the closing appointment without giving a reason. Mr. Forks complained about the cancellation in that he had to pay his attorney whereupon Nations agreed to waive the costs of the appraisal. Mr. Forks couldn't have his attorney at the rescheduled closing appointment on August 15, 1996. The Nations closer representative reviewed the loan papers with Mr. Forks "very, very quickly". As noted by Mr. Forks, "...the guy was going over them with me but so fast I really didn't understand them all, I just trusted him." Mr. Forks did not see the broker fees—such mortgage broker fees in the loan documents increased from \$7,805.00 to \$8,305.00 without any explanation from Nations to Mr. Forks for the increase. Mr. Forks was upset that his cash back was only \$4,249.25 rather than the \$10,000.00 amount they had discussed. Nations then had one of its other representatives talk to Mr. Forks. This Nations representative then termed the rate Mr. Forks would receive after a year as a "premium rate". The Nations closer also told Mr. Forks that since it was an election year, the interest rates would probably not increase. Mr. Forks considered these matters, placed his trust in Nations and went ahead and signed the loan documents. Mr. Forks was not able to remodel his house as he had planned but was limited to painting part of the interior and putting down some carpet.

Mr. Forks contacted Nations to convert the ARM to a fixed-rate loan after a year had passed since closing. Nations told him he could not get the fixed-rate loan because he had been late on a truck payment. Mr. Forks had not missed any truck payments thus he complained to Nations. He told Nations that he met the condition of making all of his mortgage payments on time. Mr. Forks even complained to Nations president Jamie Chisick, but without success. His interest rates had increased on the Nations-brokered loan. Mr. Forks then refinanced with another company and had to pay a prepayment penalty of approximately \$5,000.00.

98. **Robert Eugene Sutton** of Tacoma, Washington, was contacted by Nations about refinancing. Mr. Sutton is retired and was interested in lowering his monthly mortgage payments—he did not have credit card debt to pay and did not ask for any cash back. He had “perfect credit”. He applied for a loan through Nations in July of 1996. Mr. Sutton told Nations representative Robert Cleaves that he wanted a fixed-rate loan, but was convinced by Robert Cleaves that he “could save money and interest by going to the variable rate”. Mr. Sutton does not believe that Robert Cleaves told him that Riverview Escrow Company would be the escrow company. Robert Cleaves did not tell him that Nations owned an interest in Riverview Escrow. Nations provided Mr. Sutton with an “Estimated Cost Analysis”.

Robert Cleaves came to Mr. Sutton's home to close the loan on September 21, 1996. Robert Cleaves went through the loan papers, “But he didn't explain it that much”. He did tell Mr. Sutton that if interest rates went up then his payments would increase and that if rates went down, then his payments would be reduced. Robert Cleaves told Mr. Sutton that he could convert to a fixed rate loan if he kept his payments current for one year.

Mr. Sutton made his mortgage payments on time during the stated year. He contacted Nations to convert the loan to a fixed-rate loan as instructed by Robert Cleaves, but was unable to get the loan converted to a fixed-rate loan. Nations referred him to the company currently handling his loan.

Even though interest rates were going down, Mr. Sutton's payments under the Nations loan increased—Mr. Sutton's payments started at \$501.00 per month and had increased to over \$900.00 per month during the two years he had the loan. It got to the point that he “wasn't able to afford to make the payments” and Mr. Sutton then refinanced with another company and got a fixed-rate loan.

Mr. Sutton feels Nations misled him.

99. **Gloria Post** of Des Moines, Washington, was contacted by Nations via telephone about refinancing. Ms. Post was interested in refinancing to lower her interest rate (currently 8.75%) and to get some money back for a new heating system. She told Nations that she wanted a fixed-rate loan. Ms. Post signed a Nations loan application dated December 14, 1995. Ms.

Post recalls dealing with Nations representative Steve Willis by phone. Ms. Post asked Mr. Willis how many points Nations charged and Mr. Willis told her that Nations does not charge points.

After receiving loan papers in the mail, Ms. Post contacted Mr. Willis about a large loan fee to which Mr. Willis responded, "Oh, the lender pays that". Ms. Post had a "feeling" about the Nations loan and thereupon notified Mr. Willis that she did not think it was a good idea to go through with the loan. Steve Willis thereupon sent Scott Johnson to her house on March 6, 1996. Even at that meeting, Ms. Post recalled:

Well, I had the feeling that every time I wanted to get down to a certain—ask a certain question about a certain thing, **I was led away from the question**. And finally we reached this stalemate where I thought that I really was not going to go through with the loan when he called Steve Willis on the phone. So then he was sitting next to me and I was on the phone with Steve, and they kept emphasizing the fact that this was a Fannie Mae loan, that it was at 7.25, which was a point—1.5 less than I was paying, and that it wouldn't last forever and that I should—it was to my best advantage to do it right away. And he also pointed out that the APR had nothing to do with what the actual loan rate was.

Nations also told her that if she made a double payment for the first payment, it would be tax deductible. Nations did not mention that the loan included costs of \$6,982.00, nor did Nations explain that she was paying lender discount points of \$1,332.50. Ms. Post relied on the representations from Nations and went ahead and signed the loan papers. Though she signed documents containing the loan amount and costs, the Nations closer engaged in **"covering up of certain figures"** and used a **'lot of misdirection'** of Ms. Post's attention. She did not understand the costs of the loan until some 10 days later.

When Ms. Post received final escrow papers approximately 10 days after closing, she was surprised that the loan amount was so high—she telephoned Nations and was told by the Nations receptionist that no one was available to talk to.

Ms. Post feels Nations deceived and misled her about the loan. Ms. Post consulted with an attorney and ultimately received a \$5,500.00 refund from Nations.

100. **Jerry Stokes**, a retired meat cutter from Federal Way, Washington, was contacted about refinancing by Nations via mail. Mr. Stokes had a fixed-rate loan at just under 10%. In a Nations loan purpose letter, Mr. Stokes listed the primary purpose for refinancing was to "buy a car". Nations representative Scott Johnson told Mr. Stokes that he could get him a loan at a lower interest rate and could also get him some cash back. Mr. Stokes told Nations representative Scott Johnson that he was interested in a fixed-rate loan (he did not want an ARM because he was retiring and needed to know what his payment was each month). Scott

Johnson initially told Mr. Stokes that he thought he could get a fixed rate loan, but later said he could not—the Stokes had declared Chapter 13 bankruptcy and had a history of some late bill paying. Prior to closing, Nations did not tell Mr. Stokes that Riverview Escrow Company would be the escrow company or that Nations owned an interest in Riverview Escrow. Nations did not discuss the costs of the loan with Mr. Stokes.

Scott Johnson told Mr. Stokes that the loan "...would be switched to a fixed rate" loan at the end of one year as long as Mr. Stokes made his loan payments on time—Mr. Stokes would not have gone through with the loan had Nations not assured him that it would be switched to a fixed-rate loan at the end of a year. Scott Johnson did not tell Mr. Stokes that the switch to a fixed-rate loan would involve costs; this led Mr. Stokes to believe that no costs would be involved. Nations also presented an Estimated Cost Analysis to Mr. Stokes and explained it was a way he could cut down the life of the mortgage.

At closing on April 15, 1997, Mr. Stokes was surprised upon seeing some \$7,000.00 in fees associated with the loan. Mr. Stokes needed to pay for roof repairs and liked the idea of getting some cash back on the loan. He had also been assured that the loan would be switched to a fixed-rate loan in a year. So, he and his wife opted to go through with the loan. At the hearing upon being questioned based on his current reading of the prepayment provision in the loan whether he would have realized there was a prepayment penalty had he read such provision back when he signed it, Mr. Stokes responded, "I read it three times and I still don't understand what it says." Mr. Stokes relied on what Nations told him in the loan process.

Mr. Stokes made all his loan payments on time during the first year of the Nations loan, but the loan was not switched to a fixed-rate loan as he had been told. Mr. Stokes did not ~~cont~~act Nations to inquire about this.

Mr. Stokes' interest rates under the Nations loan went up.

Scott Johnson later contacted Mr. Stokes and told him the Nations loan was "a bad mortgage" and offered to get him a better loan. As of this time, Scott Johnson was no longer working for Nations, but had changed to a different company. Mr. Stokes was not interested since it would cost him one percent.

101. **Robert Dorr** of Seattle, Washington, was contacted in the summer of 1997 by Nations telemarketer "Caprice" by telephone from California. Mr. Dorr responded that he would be interested if he could lower his monthly payments and get the loan with no out-of-pocket costs. He estimated the value of his house to be around \$200,000.00 with a current mortgage balance of approximately \$50,000.00—he wanted cash back of "not more than \$5,000.00" to pay off some credit cards. Nations representative Steve Willis then contacted Mr. Dorr and a loan application dated August 13, 1997 was taken. Mr. Dorr had the requested appraisal

done at his own expense and then nothing happened for the next "six weeks or so". Mr. Dorr made numerous calls to Nations, but his calls were not returned. He then complained to Jamie Chisick in California and shortly thereafter Steve Willis again contacted Mr. Dorr. This was followed by "another lull". When Mr. Dorr asked Steve Willis what his monthly payment under the loan would be, Steve Willis did not answer the question, but instead sent Mr. Dorr estimates. Mr. Dorr again called Steve Willis and again asked what his monthly payment and loan balance would be under the loan and again Steve Willis did not provide the information. Mr. Dorr considered this unusual.

Scott Johnson came to Mr. Dorr's home to close the loan, at which time Mr. Dorr first learned what the loan was going to cost—some \$6,000.00. Mr. Dorr declined to sign the closing papers. Steve Willis called a day or two later and offered to reduce the costs to \$4,000.00. Mr. Dorr was not interested and Steve Willis offered to lower costs to \$3,000.00, then to \$2,000.00. Mr. Dorr felt like he was "**getting gouged**" by Nations in the attempt to charge him high fees and then offer to reduce the fees to a level he would accept. Mr. Dorr was "fed up" and declined to do business with Nations.

102. As referenced above in the Salick testimony, Nations delivered SCME Mortgage Bankers TILs to borrowers that contained a section that "**These are FEES NOT paid by the Borrower**" in which Nations' broker fee was listed. See Exhibit No. 67. Other such borrowers include Singer, Mai, Franklin and Jasper. In these cases, the borrowers in fact did pay the listed broker fee to Nations. Nations acknowledged delivering these TILs and further acknowledged that as broker, Nations is responsible for the false statements contained in such disclosures.

103. As established above, Nations used the "Estimated Cost Analysis"/"Monster" form in an attempt to convince prospective borrowers to go through with the loan. Nations represented that the borrower could change the term of the loan from a 30-year term to a 15-year term by making extra payments. Though an estimated 90% of Nations' loans were ARMs according to Jamie Chisick, Nations chose to use a savings calculation on the "Monster" form that applied to fixed-rate loans. Fixed-rate loans amortize differently than ARMs. Nations savings calculation on the ARM as set forth on its "Monster" form overstated savings to the borrower by tens of thousands of dollars.

104. In the Charges, DFI seeks **restitution** of \$735,641.13 from Nations for 122 violations under RCW 19.146.030(4) of over-charging Washington borrowers—a few corrections were noted by DFI and the amount of restitution being sought on the record was \$717,586.13 (Transcript, page 631). RCW 19.146.030(4) requires a mortgage broker to make additional fee disclosures in certain cases when there are increased fees that inure to its benefit. As explained by Chuck Cross of DFI, the purpose of this section is to prevent "bait-and-switch" practices with consumers. DFI used the following test:

- (1) Have the total closing costs increased from the initial good faith estimate disclosure to the HUD-1 settlement statement given at closing?
- (2) If yes, has any item inuring to the benefit of the mortgage broker increased from the good faith estimate to the HUD-1?
- (3) If yes, was the broker's fee increase reasonably foreseeable?
- (4) If the fee increase was not reasonably foreseeable, the mortgage broker is in violation of RCW 19.146.030(4).
- (5) If the fee increase was reasonably foreseeable, two requirements must be met:
  - (a) Was a new good faith estimate provided by the mortgage broker to the borrower at least three days before the borrower signed the closing papers? If no, the mortgage broker is in violation.
  - (b) Was a written explanation of the fee increase provided at least three days before signing? If no, the mortgage broker is in violation.

DFI reviewed the costs shown on the GFE and compared them to the costs shown on the HUD-1 Settlement Statement. DFI seeks a "low overcharge" for borrowers who received an initial good faith estimate at least three days before signing, but the amount charged on the HUD-1 is greater than the amount initially disclosed. DFI seeks a "high overcharge" for borrowers who did not receive a GFE at any time before the borrower signed the closing papers.

Even though the written explanation for the fee increase had to be provided at least three days before signing the closing papers, DFI's investigation did not find a single file where Nations provided a written explanation for the increase.

Under the statute, the disclosure is to be provided by the mortgage broker. Michael Buff of Nations acknowledged that a lender's revised GFE "doesn't excuse the lack of a Nationscapital revised...". In the absence of a Nations revised GFE in such cases, Mr. Buff noted Nations could not prove disclosure and that Nations accepts the overcharge. Mr. Buff later argued "for the record" that lender documents given to a borrower by Nations should meet the tests set forth by Mr. Cross. Under DFI's analysis, an "Itemization of Amount Financed" is not accepted as a substitute for the GFE. DFI reviews the fees in its analysis on a "line-by-line" basis, as opposed to a net change as argued by Nations; instead of DFI's

approach, Nations argued that redisclosure is required only when the total closing costs increase.

105. In its analysis of Nations' records for compliance under RCW 19.146.030(4), DFI itemized 121 violations between April 1995 and October 1997 of both "low" and "high" overcharges totaling \$717,586.13 for which it seeks restitution, see Exhibit 66.

106. Nations agreed that some but not all of the borrowers are entitled to restitution. See Nations Exhibit Nos. 1523 and 1532A. Contrary to the testimony of Steve Willis that there was a Nations policy on fees, Michael Buff testified that there was no such Nations policy, unless it was to be a no fee loan in which case Jamie Chisick would have to approve it. Jamie Chisick had ultimate authority on fees. Nations further argued that any ordered restitution should be against Nations and not against Jamie Chisick.

107. A "low overcharge" of \$5,058.94 for Prater is included in the 121 violations for which DFI is seeking restitution. Nations and Prater entered into a Settlement Agreement in which all claims were settled. In view of the fact that Nations has already paid Prater, Nations argues that it should not be required to again pay restitution to Prater.

108. Nations argued that DFI did not have authority to assess restitution until July 1, 1996.

109. Nations submitted mortgage broker branch office applications for Portland, Oregon and Orange, California to DFI on September 29, 1997. DFI advised Nations in November 1997 that it was DFI policy not to issue a license to a mortgage broker that is under investigation. In any event, DFI did not issue any branch license authority to Nations. During all relevant periods for which it held authority, Nations only licensed location was its Bellevue location. In the Charges, DFI seeks an order denying Nations' application for a branch license authority for the Portland and California locations.

110. Nations ceased doing business as a mortgage broker in Washington and surrendered its mortgage broker license effective May 14, 1998.

111. In the Charges, DFI seeks a **revocation** of Nations' mortgage broker license for a period of twenty years.

112. In the Charges, DFI seeks a **prohibition** against Jamie Chisick from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146, as an officer, principal, employee, or loan originator, for a period of twenty (20) years.

113. In the Charges, DFI seeks a prohibition against Michael Buff, Scott Johnson, Kevin Kraus and Darin Williams from participating in the conduct of the affairs of a licensed mortgage



broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

114. In the Charges, DFI seeks an **investigation fee** of \$29,040.75. This is calculated at \$45.00 per hour times 645.35 hours of investigation by the staff members involved, see Ex. 77. DFI requests that this investigation fee be assessed against Nations and Jamie Chisick, jointly and severally.

### CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to Chapter 19.146 RCW and Chapter 208-660 WAC.
2. Such proceedings are governed by the provisions of the Administrative Procedure Act, Chapter 34.05 RCW. RCW 19.146.230
3. The Director of the Department of Financial Institutions ("Director") is responsible for the enforcement, administration and interpretation of Chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The purpose of the Act is set forth in RCW 19.146.005, in which the legislature declared:

[T]he brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

Pursuant to RCW 19.146.223, the legislature gave the Director the power and broad administrative discretion to administer and interpret the Act to fulfill the intent of the legislature as expressed in RCW 19.146.005.

4. RCW 19.146.245 provides:

A licensed mortgage broker is liable for any conduct violating this chapter by the designated broker, a loan originator, or other licensed mortgage broker while employed or engaged by the licensed broker.

5. Even though DFI entered into a Consent Order with Steve Willis, Nations is still liable for the violations of Steve Willis, its designated broker in the State of Washington. RCW 19.146.245. This statute also provides that Nations is liable for the acts of its loan originators.

6. **RCW 19.146.060 (Accounting requirements)** provides:

(1) A mortgage broker shall use generally accepted accounting principles.

(2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at the mortgage broker's usual business location until at least twenty-five months have elapsed following the effective period to which the books and records relate.

(3) Where a mortgage broker's usual business location is outside of the State of Washington, the mortgage broker shall, as determined by the Director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter.

(4) "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by a mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan.

[Prior to July 21, 1997, brokers were required to maintain records for four years].

7. **WAC 208-660-140 (General recordkeeping requirements)** provides:

(1) Each mortgage broker shall retain its books and records for a minimum of four years after the effective period to which the books and records relate.

However, books and records relating to a specific loan application must be maintained for a minimum of four years after a loan application is received. These books and records must be retained in all cases where a loan application has been received, any deposits or fees associated with a mortgage application have been accepted, or any written agreement has been executed.

(2) All books and records must be kept in a location in this state that is readily accessible to the department. However, a mortgage broker may store its books and records outside the state with the prior approval of the director, and after executing a written agreement with the director.

(a) To provide access to its books and records to investigate complaints against the mortgage broker; and

(b) To pay the department's travel, lodging and per diem expenses incurred in travel to examine books and records stored out-of-state.

(3) Books and records include without limitation: The original contracts for the broker's compensation, an accounting of all funds received in connection with loans, a copy of the settlement statements as provided to borrowers, a record of any fees refunded to applicants for loans that did not close, copies of the good faith estimates and all other written disclosures, and all other correspondence, papers or records relating to loan applications.

8. Subsection (2) of WAC 208-660-180 expressly provides that all records must be kept in a location in this state readily accessible to DFI. Nations clearly violated these record keeping requirements. Though Nations provided a copy of an April 7, 1995 letter requesting permission to keep records in California, DFI never received such letter and thus never responded. DFI did not even have authority to allow out-of-state storage of records until June 1995, and even then it could only be done with prior approval of the director and after executing a written agreement to provide access to its records to investigate complaints against the mortgage broker and pay DFI travel expenses incurred to examine records stored out of state as provided in the 1995 amendment to RCW 19.146.060, see subsection (3). Nations never maintained records on its Washington borrowers in Washington, but instead kept such records in California throughout the period in question. Though Nations initially alleged it had DFI approval to retain records outside of Washington, such was not established to be the case—**Nations never received DFI approval to keep records out of state.** Nations thus failed to maintain records in compliance with RCW 19.146.060(3) and WAC 208-660-140(2).

9. Due to Nations' failure to maintain records in the State of Washington, fines in the amount of \$97,800.00 will be assessed against Nations. This is calculated at \$100.00 per day times 978 days during which Nations conducted business in Washington without maintaining records in Washington as required under the Mortgage Broker Practices Act. As provided in RCW 19.146.220(3), each day's continuance of a violation or failure to comply is a separate

and distinct violation or failure. WAC 208-660-165 provides that each violation of the Act subjects the violator to a fine of up to \$100.00 for each offense.

10. DFI is requesting various violations and fines also be imposed personally on Jamie Chisick and Michael Buff. However, a ruling of corporate liability does not automatically lead to individual liability for corporate officers. As stated by the court in State v. Ralph Williams, 87 Wn.2d 298, 553 P.2d 423 (1976) at page 322:

If a corporate officer participates in the wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as the corporation, is liable for the penalties.

[See also State v. WWJ Corporation, 88 Wn.App. 167, 941 P.2d 717 (1997)].

11. Thus, before personal liability for the records violations can be imposed on Jamie Chisick and Michael Buff, it must be established that they either participated in the wrongful conduct or, with knowledge, approved of the wrongful records conduct. Such was not established by the evidence on the RCW 19.146.060(3) record keeping issue. Jamie Chisick thought, albeit erroneously, that Nations had received permission from the State of Washington as it had in other states to maintain records out of state. In reality, no such permission from Washington DFI was ever given. Though Nations is liable for this violation, Jamie Chisick was not shown to have personally participated in or knowingly approved of such wrongful conduct. Accordingly, Jamie Chisick will not be held individually liable under RCW 19.146.060(3).

12. **RCW 19.146.0201 (Loan originator, mortgage broker-prohibitions-requirements)**  
- provides:

It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1)(d) or (f) in connection with a residential mortgage loan to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the

time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (f) or (g) or a lender with whom the mortgage broker maintains a written correspondent or loan brokerage agreement under RCW 19.146.040.

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest or otherwise fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity;

(11) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(13) (a) Except when complying with (b) and (c) of this subsection, to act as a mortgage broker in any transaction (i) in which the mortgage broker acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage broker services to the borrower, the mortgage broker, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LICENSED MORTGAGE BROKER, AND WOULD LIKE TO PROVIDE MORTGAGE BROKERAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A MORTGAGE BROKER IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage brokerage business activities and shall maintain such person's mortgage brokerage business records separate and apart from the real estate brokerage activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted in an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the brokerage business firms results. This subsection (13)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage brokerage activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(14) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

13. Prior to the above subsection (8) wording, the subsection provided that it was a violation to make any false statement in connection with any reports filed by a licensee or in connection with any examination of the licensee's business. DFI seeks to impose fines under "pre-July 21, 1997" subsection (8) of RCW 19.146.0201 of \$9,100.00 against Nations and \$9,100.00 individually against Jamie Chisick for making false statements and omission of material facts in connection with a report. DFI also seeks to impose additional fines after July 21, 1997 under amended subsection (8) for the negligently making of false statements or knowingly and willfully making omissions of material fact in connection with reports or DFI investigation—DFI seeks fines of \$37,100.00 (at \$100.00 times the 371 incomplete files) against Nations and

\$37,100.00 individually against Jamie Chisick and \$37,100.00 individually against Michael Buff. Nations is liable for the false statements regarding the incomplete files. Nations is liable for its false statements regarding the name change from GAMC. Nations is liable for the false statements provided by Steve Willis beginning at the June 24, 1997 DFI visit and continuing thereafter; Steve Willis provided several false statements to DFI in its investigation of Nations, for example, Nations' authority to maintain records in California and the existence of manuals at the Bellevue office. Though Nations, the corporation, was guilty of such violations, individual liability of Jamie Chisick and Michael Buff was not established, as covered below. This Tribunal will uphold the "pre-July 21, 1997" subsection (8) fine of \$9,100.00 against Nations, as well as the "post-July 21, 1997" subsection (8) fine of \$37,100.00 against Nations.

14. However, the evidence fell short of establishing individual liability under subsection (8) of RCW 19.146.0201 on the part of Jamie Chisick or Michael Buff—neither was shown to have personally made or knowingly approved of false statements in reports or in the DFI investigation. Michael Buff provided DFI with the Nations records as they were, though incomplete. Nations did not properly maintain certain forms and documents in its files. Records violations of Nations are addressed elsewhere in this order. Michael Buff represented to DFI that the records he produced were complete, which to his knowledge was the case. This was not shown to be a negligent making of a false statement or a knowing and willful omission under subsection (8) of RCW 19.146.0201. Neither Jamie Chisick nor Michael Buff were shown to have removed documents from the files or to have knowingly approved of such action. Based on the evidence presented, this Tribunal is unable to conclude that a violation under subsection (8) [either pre-July 21, 1997 or after] on the part of Jamie Chisick or Michael Buff has been established. Accordingly, neither Jamie Chisick, nor Michael Buff will be held personally liable under subsection (8) of RCW 19.146.0201.

15. **Nations employed unfair and deceptive loan practices in schemes to defraud or mislead borrowers to obtain property by fraud or misrepresentation.** Nations' argument that it was only a personal scheme of Steve Willis is rejected. Though numerous deceptive and fraudulent representations were made by Steve Willis, the record also established such unfair and deceptive loan practices on the part of other Nations' representatives. For instance, Nations' representatives Scott Johnson, Brad Quigley and Jamie Chisick were the ones that dealt with John Salick. In the Salick loan (as well as others), Nations delivered false, deceptive and misleading TILs to borrowers representing that the borrower was not paying the broker fee when this was not true. There were other instances not involving Steve Willis. When William Hines was on the verge of not signing closing papers due to the high broker fee, "Robert", the document signer, called "Jamie" in California—"Jamie" told Mr. Hines to have "Robert" show him how much he would be saving by going through with the loan. Nations made several deceptive and misleading representations to Mr. Hines. Nations' representatives Darin Williams and a "Tara" were the ones involved in deceptive and misleading statements to borrower Gerald Slater. Todd Arnold was the Nations representative who was involved in deceptive and misleading representations to borrower Joe Edward Todd

regarding mortgage payments and a "waiver" of the prepayment penalty. Scott Johnson was the Nations representative who made deceptive and misleading representations to borrower Shirley Payne—Mr. Johnson falsely led Ms. Payne to believe that taxes and insurance were included in the loan and falsely represented that the ARM would convert to a fixed-rate loan at the end of a year. A "Scott" from Nations falsely represented to borrower Judson Forks that if he made his mortgage payments on time and didn't incur additional debt during the first year of the ARM, that Nations would set him up on a fixed-rate loan at the "going rate". Scott Johnson was also the Nations representative who falsely represented to borrower Jerry Stokes that his loan would be switched to a fixed-rate loan at the end of a year if he made his payments on time. Thus, Steve Willis was not the only one involved in Nations' scheme of fraud and deception in the State of Washington—as to the operations relating to Washington State, it was shown to be a Nations-wide scheme to defraud and mislead Washington borrowers.

16. In addition to the above-referenced instances of fraud and deception, many more are found in the borrower evidence set out earlier in this order. Nations repeatedly employed methods and techniques designed to confuse and mislead Washington borrowers. Nations led borrowers to believe that Nations could get the fixed-rate loan they wanted, but ended up giving the borrower an Adjustable Rate Mortgage (ARM). This practice started as early as the telemarketer call. Nations used a variety of misleading techniques to persuade the borrowers to sign. Nations made borrowers feel rushed at closing by telling them that they had other appointments to keep. Nations misled borrowers as to the actual amount of the loan. Nations misled borrowers as to the costs of the loan. Nations used the "Monster" form on its ARMs and misrepresented that the term of the loan would be changed from 30 to 15 years—in its use of the "Monster" form on ARMs, Nations greatly overstated finance charge savings to borrowers. Nations deceptively led borrowers to believe that the ARM would convert to a fixed-rate loan at the end of a year as long as they made payments on time and met a few other conditions. Nations misled borrowers regarding prepayment penalties. Nations engaged in evasive and misleading actions and "blow-by" to avoid answering borrower questions directly. Nations misled borrowers to believe taxes and insurance were included in the loan when they were not. See Telemarketing and Document Signer Manuals and taped training session. Also see borrower testimony for specifics.

17. This Tribunal rejects Respondents' allegation that the Document Signer Manual was not used in Washington. The firsthand borrower testimony on this record established otherwise. See borrower testimony and compare with the Document Signer Manual,

18. Respondents argued that Steve Willis is not to be believed, but this argument does not dispose of the overwhelming testimony of Washington borrowers who similarly testified and established Nations' scheme and practice of fraud and deception. Again, see borrower testimony.



19. Thus, the record established that Nations employed schemes, devices or artifices to defraud or mislead borrowers and thus violated subsection (1) of RCW 19.146.0201. Nations' actions constituted an unfair or deceptive practice under subsection (2) of RCW 19.146.0201. Nations thus obtained property by fraud or misrepresentation, a violation of subsection (3) of RCW 19.146.0201. Accordingly, Nations will be assessed a fine of \$64,300.00 (assessed at \$100.00 per day times 643 separate violations).

20. DFI also seeks to impose fraud and unfair and deceptive practices fines of \$64,300.00 individually on Jamie Chisick under RCW 19.146.0201(1), (2) and (3). As indicated above, such personal liability would not apply unless he participated in the wrongful conduct or, with knowledge, approved of the wrongful conduct. Jamie Chisick was shown to have participated in and/or knowingly approved of the fraud and unfair and deceptive practices violations. He had been aware of such practices and complaints about them for several years. Borrowers complained to Jamie Chisick regarding these practices:

(a) Heidi Monroe's complaint in the fall of 1995 about Nations increasing its broker fee from \$3,445.28 to \$9,360.00 went up to Jamie Chisick, who authorized a \$3,000.00 refund of broker fees.

(b) In October 1995 Sharon Shoop complained directly to Jamie Chisick that her loan fees increased from \$5,203.00 to \$10,794 without explanation.

(c) Joe Todd also complained directly to Jamie Chisick about Nations' failure to follow through with its promises though Jamie Chisick never responded to his voice mail messages.

(d) In the spring of 1996 Gloria Post was told by Nations that the lender paid the loan fee. At closing the document signer covered up some of the figures and misdirected her attention to other matters. She did not understand that she was being charged high loan costs until some 10 days later. Ms. Post then complained to Nations without success. She ended up getting a lawyer and ultimately received a settlement from Nations for \$5,500.00.

(e) Judson Forks closed his loan in August 1996 and was upset that his cash back was \$4,249.25 rather than the \$10,000.00 cash back he and Nations had been discussing. Nations had told him that Nations would convert the ARM to a fixed-rate loan at the end of a year—he became upset with Nations when Nations did not follow through with what it told him and he ended up complaining directly to Jamie Chisick without success.

(f) Phyliss Beall closed her loan through Nations in October 1996. Ms. Beall was dissatisfied that Nations misrepresented matters regarding her loan and she thereupon complained to a "Mr. Chismick" at the Nations California office. "Mr. Chismick" did not help. Ms. Beall hired an attorney and got her complaint settled.

(g) In November 1996, Stanley Moffett complained directly to Jamie Chisick that Nations was not being honest with him. Jamie Chisick responded by agreeing to pay back Mr. Moffett \$5,000.00 of the costs of the loan.

Contrary to the allegation of Jamie Chisick, the evidence established that complaints from Washington borrowers were specifically brought to his attention in the 1995 through 1997 time period; these borrower complaints were prior to the time of the Salick and Prater complaints of April and May of 1997 and a significant number involved Nations designated broker in Washington—Steve Willis. Several of these complaints were settled. When Nations agreed to settle such borrower complaints, Jamie Chisick was the person at Nations who approved such settlement agreements and settlement payments to such borrowers. The assessment of the fraud and unfair and deceptive practices fine under RCW 19.146.0201(1), (2) and (3) of \$64,300.00 personally against Jamie Chisick will be upheld.

21. Under **subsection (7) of RCW 19.146.0201**, a mortgage broker cannot: "Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;". Pursuant to subsection (7), DFI seeks to impose a \$29,300.00 fine against Nations and a \$29,300.00 fine individually against Jamie Chisick (calculated at \$100.00 for each of the 293 separate violations). The evidence abundantly established that Nations made false or deceptive statements or representations to Washington consumers regarding their residential mortgage loans. As early as the initial call to the prospective borrower, the Nations' telemarketer would "bait" the borrower with an attractive fixed-rate loan. As set out earlier in this order, Kevin Kraus trained and supervised the telemarketers. The borrowers would thus go through with the applications process. Nations would later "switch" the borrower to an ARM. In this process, Nations employed a variety of false or deceptive representations regarding the terms and conditions of the loan. Nations led borrowers to believe that their ARM loan would convert to a fixed-rate loan after one year, but this representation was false and deceptive. Nations supplied materials and training to its employees on deceptive methods and not directly answering questions. See Manuals, taped training session and borrower testimony of record. Consistent with the conclusions immediately preceding (dealing with fraud, unfair and deceptive practices), this Tribunal will uphold the assessment of the \$29,300.00 fine under RCW 19.146.0201(7) against Nations, as well as the \$29,300.00 fine individually against Jamie Chisick as having participated in and/or knowingly approved of the wrongful conduct.

22. It is a violation of the Act to fail to make **disclosures** to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law. See **RCW 19.146.0201(6)**. In addition to federal disclosure requirements, the Act requires a mortgage broker to make specific "state" disclosures. The content and timing of the disclosures are mandated by law. These are summarized as follows:

a. **Truth in Lending Disclosure Statement ("TIL Disclosure" or "TIL").** RCW 19.146.030(2)(a) requires disclosure of the annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the federal truth-in-lending act ("TILA"), 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 ("Regulation Z"), as now or hereafter amended, is deemed to comply with the disclosure requirements of this subsection.

b. **Good Faith Estimate Disclosure ("GFE Disclosure" or "GFE").** RCW 19.146.030(2)(b) requires disclosure of the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates or settlement services and special information booklets in compliance with the requirements of the federal real estate settlement procedures act ("RESPA"), 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500 ("Regulation X"), as now or hereafter amended, is deemed to comply with the disclosure requirements of this subsection.

c. **Rate Lock Disclosure.** RCW 19.146.030(2)(c) requires disclosure, if applicable, of the cost, terms, duration and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change.

d. **Third Party Provider Reports Disclosure.** RCW 19.146.030(2)(d) requires that mortgage brokers provide a statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent.

e. **Lock-in Fees Disclosure.** RCW 19.146.030(2)(e) states that mortgage brokers must inform borrowers whether and under what conditions any lock-in fees are refundable to the borrower.

f. **Trust Funds Disclosure.** RCW 19.146.030(2)(f) requires a statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services will

be held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

g. **Second Lock-in Disclosure.** RCW 19.146.030(3) states that if subsequent to the written disclosure being provided under RCW 19.146.030(2)(c), a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c).

23. As for the timing of the disclosures, RCW 19.146.030 provides, as of July 21, 1997, the state disclosures must be delivered, "Within three business days following receipt of a loan application or any moneys from a borrower...". Prior to July 21, 1997, the state disclosures had to be delivered, "Upon receipt of a loan application and before the receipt of any moneys from a borrower." In May 1996, the Department rendered an interpretation that in situations where no moneys have been received from a borrower, the state disclosures may be made within three days of receipt of an application. However, when funds have been received from a consumer, the disclosure was required to be made "before the receipt" of those funds.

24. This Tribunal concludes Nations received an application at the time its employee obtained the borrower's signature on the application, thus triggering the disclosure obligations. This Tribunal rejects Respondents' argument that the disclosure trigger should be the receipt by the broker of a "completed application" including not only the completed and signed application, but also all documentation. This is not what the law provides. As set out above, the statute requires full written disclosure (prior to July 21, 1997) "Upon receipt of a loan application and before the receipt of any moneys from a borrower" or (as of July 21, 1997) within three business days "following receipt of a loan application or any moneys from a borrower". Further, Respondents suggested approach would lend itself to ambiguity and uncertainty.

25. The Act also requires that mortgage brokers comply with all requirements of the TILA Regulation Z, 12 C.F.R. Sec. 226, the RESPA Regulation X, the Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 201.12. See RCW 19.146.0201(10), which requires compliance with these federal laws and regulations, and RCW 19.146.0201(6), which states it is a violation of the Act to fail to make disclosures to loan applicants as required by RCW 19.146.030 and any other applicable state or federal law.

The following "federal" disclosures are required under the laws and regulations listed above:

a. The Truth in Lending ("TIL") Disclosure.

- b. The Good Faith Estimate ("GFE") Disclosure.
- c. The Controlled Business Arrangement ("CBA") or Affiliated Business Arrangement ("AfBA") Disclosure.

26. Nations failed to give borrowers the **Rate Lock Disclosure** and the follow-up disclosures required by RCW 19.146.030(2)(e) and (3) in the 643 applications for the period of May 30, 1995 and January 1998. Nations failed to give the refundable lock-in fees disclosure required by RCW 19.146.030(2)(e). Nations' argument that the lenders it worked with did not offer locks thus DFI's model forms would not be workable does not excuse Nations failure to provide the required disclosures. Nations operated without providing the disclosures required by RCW 19.146.030(2)(e) and (3)—Nations did not use DFI's model forms, nor did it submit an alternate disclosure form for DFI approval. If the model form was not workable for Nations, the burden was on Nations to submit an alternate form that was "acceptable to the director" rather than continuing to operate out of compliance with the Mortgage Broker Practices Act. See WAC 208-660-130.

27. In at least 643 applications taken between May 30, 1995 and January 1998, Nations failed to give the **Trust Funds Disclosure** to consumers. DFI's investigation revealed that only 23 of 77 consumer transactions contained this disclosure subsequent to October 1997.

28. Again, in at least 643 applications taken between May 30, 1995 and January 1998, Nations failed to give the **Third Party Provider Reports Disclosure** to consumers. Only 23 of 77 consumer transactions contained this disclosure subsequent to October 1997.

29. As discussed above, the **TIL Disclosure and GFE Disclosure** must be provided to the borrower within specific time periods. The triggering of the time periods under Washington State law is receipt of an application or receipt of moneys from a borrower. The evidence in this case showed that the majority of the loan applications were marked as received by mail, but were actually received when the Nations employee visited the borrower's home. Nations' suggested approach would make it difficult to determine the point of receipt of an application and tend to confuse the issue.

30. In the majority of loans, Nations contacted the borrower by telephone and obtained certain information to be completed in the Federal National Mortgage Association ("FNMA") application form. Subsequent to this telephone solicitation, a Nations employee, generally Steve Willis or Scott Johnson, met with the borrower to complete and/or obtain a signature on the FNMA application form. The meetings were generally conducted at the borrowers' residences. Nations' obligation to provide disclosure was triggered when Nations' employee was in receipt of the application signed by the borrower. Nations did not provide disclosures out of its licensed location (Bellevue), but rather its practice was to make disclosures from California after the application had been forwarded to California. Nations did not assign Steve Willis the responsibility to prepare and mail disclosures. The way Nations structured its

operation resulted in recurring late disclosures to its Washington borrowers, as established by the evidence in this record.

31. In repeated instances, Nations did not provide the borrower with the TIL and GFE Disclosures until the time of signing (generally 30 or more days after the date the disclosures were due). Nations had a pattern or practice of failing to provide consumers with disclosures as required pursuant to RCW 19.146.030 and RCW 19.146.0201(10). Nations continued to violate the disclosure requirements after the Stay of the TCD, which was entered on September 18, 1997.

32. This Tribunal will uphold the DFI-assessed fine of \$64,300.00 against Nations for violations of the Mortgage Broker Practices Act disclosure requirements under RCW 19.146.021(6). Nations did not make the disclosures as required under either federal or state disclosure guidelines or requirements in the 643 reviewed loan files. It is noted that this fine could have been much higher if DFI had counted each disclosure violation and assessed a \$100.00 fine for violation for each day of violation.

33. However, this Tribunal will not uphold the assessment of disclosure fines under RCW 19.146.0201(6) personally against Jamie Chisick. Though responsible for the overall operation of Nations, Jamie Chisick, was not shown to have personally participated in or knowingly approved the disclosure violations. Thus, no individual liability will be imposed on Jamie Chisick under RCW 19.146.020(6).

34. **RCW 19.146.0201(10)** provides that it is a violation of the Act for a mortgage broker to fail to comply with the truth-in-lending act, and Regulation Z, the real estate settlement procedures act and Regulation X or the equal credit opportunity act and Regulation B. An **affiliated business arrangement** is:

[A]n arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider. 12 USC 2602(7)

35. Pursuant to §3500.15(b) of Regulation X, the existence of an affiliated business arrangement between a mortgage broker and escrow company does not violate section 8 of RESPA (12 USC 2607) or Sec. 3500.14 of Regulation X if the mortgage broker provides an affiliated business arrangement (AfBA) disclosure that meets the following conditions:

- (1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:
  - (i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under Sec. 3500.7(d) is provided.

36. The purpose of the AfBA disclosure is to provide the borrower with advance warning: (a) that a controlling interest in the settlement service provider exists; (b) of the cost of using the referred service; and (c) that the borrower is not required to use the controlled service and may find the same service at lower cost through another provider. Failure to provide a timely "AfBA disclosure puts the borrower at a distinct disadvantage and creates the following risks:

- a. Greater cost to the borrower;
- b. That the consumer's transaction will be closed by an escrow agent that by virtue of ownership may hold Nationscapital's interests above those of the borrower; and
- c. That the transaction will be closed by an unlicensed, unbonded, unregulated escrow agent in the State of Washington.

37. Jamie Chisick is the sole owner of Riverview, an escrow company known to provide settlement services on nearly all loans originated by Nationscapital in this state. An Affiliated Business Arrangement therefore exists between Nationscapital and Riverview. Riverview was listed as the escrow company and/or was paid a fee on the HUD-1 settlement statement in 371 closed or pending loan files, which amounted to all of the transactions Nationscapital represented as closed or pending closure for Washington consumers.

By virtue of the fact that Nations referred Riverview to all or nearly all of its borrowers, Riverview knew the referral would be made at the time the borrower was solicited. Therefore,

Nations was required to make the AfBA disclosure to borrowers upon origination of the loan application or upon delivery of the GFE.

Nations repeatedly failed to make the AfBA disclosure when required by law. Jamie Chisick and Michael Buff acknowledged that Nationscapital gave the notice late.

In most cases, the AfBA disclosure was made after Riverview prepared escrow instructions and performed other advance work on the borrower's transaction. In most cases, Nations made the AfBA disclosure when the borrowers signed the closing documents (weeks after the required date of disclosure). In several cases, AfBA disclosures were not in the borrower's loan file; thus there was no proof that the disclosures were made.

On average, the cost to a borrower of closing with Riverview was approximately \$350.00 higher than closing with a licensed Washington escrow agent. Nations benefitted by not providing a proper and timely AfBA disclosures. Jamie Chisick profited from Nations' business with Riverview. Nations was in a beneficial position in that its loans were closed by persons under the control of Nations as opposed to a neutral third party.

38. Nations failed to provide the required disclosures under RCW 19.146.0201(10). This Tribunal upholds the violations under this section against Nations and personally against Jamie Chisick, the owner of both Nations and Riverview Escrow. Jamie Chisick was aware of the importance that the disclosures be timely made, but "unfortunately" did not take action to ensure such was done. Nations will be assessed a fine of \$37,100.00 (at the rate of \$100.00 for each of the 371 transactions Nations failed to provide AfBA disclosures). Riverview Escrow's owner, Jamie Chisick, will also be assessed a fine of \$37,100.00 under RCW 19.146.0201(10).

39. RCW 19.146.0201(10) provides that it is a violation of the Act to fail to comply with the **Equal Credit Opportunity Act** ("ECOA"), 15 U.S.C. §1691, and Regulation B. 12 CFR §202.5(d) of Regulation B reads:

If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms married, unmarried, and separated. A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

Nations used a form entitled "Confidential Information Statement" that sought marital status information contrary to Regulation B. A section entitled "FORMER MARRIAGES" requests information as to whether the former spouse is "deceased" or "divorced." It further asks the date of decease or divorce and the location of the decease or divorce. Using this form is a violation of Regulation B because of the use of the term "divorced".



These ECOA violations violated RCW 19.146.020(11) [Prior to July 21, 1997] and RCW 19.146.020(10) [after July 21, 1997] and are included in the above fine.

40. RCW 19.146.030(4) provides that a mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the GFE, unless:

- (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and
- (b) the mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, no other disclosures shall be required by this subsection.

41. Under RCW 19.146.030(4), the need to charge the increased fee must not have been reasonably foreseeable at the time the written disclosure was provided. If it was reasonably foreseeable, the mortgage broker cannot charge the increased fee. If not, the broker can charge the increased fee only if it has provided to the borrower at least three business days prior to closing, a clear written explanation of the fee and the reason for charging a fee that exceeded the previously disclosed fee. As provided in RCW 19.146.220(2)(d)(ii), the Director may issue orders directing a licensee, its employee or loan originator, or any other person to pay **restitution** to an injured borrower. Nations' argument that DFI restitution authority existed only from July 1, 1996 on is rejected; RCW 19.146.220 was amended in 1994 at which time DFI was granted authority to order restitution to injured borrowers—Laws of 1994, Chapter 33, Section 12 of Substitute Senate Bill 6083. DFI had authority to order restitution to the injured borrowers during the time period set forth in the Charges (April 1995 through October 1997).

42. Nations overcharged Washington borrowers and violated RCW 19.146.030(4) as set forth in Exhibit 66. Under the statute, Nations is liable to provide a written explanation of a fee increase that is not reasonably foreseeable and must provide a new GFE at least three days before signing. Contrary to Nations' argument, a mortgage broker cannot rely on the lender GFEs to satisfy the broker's obligation under RCW 19.146.040. The mortgage broker is expressly required by RCW 19.146.030(4) to explain the reason for an increase to any fee inuring to the benefit of the mortgage broker and to disclose the increased fee at least three days before signing. Likewise, an "Itemization of Amount Financed" cannot be substituted for the GFE. It does not satisfy the requirements of the restitution statute. This Tribunal rejects Nations' "total closing costs" approach—Nations' approach would allow increased fees inuring to the broker's benefit without redisclosure as long as there was no overall increase in the total closing costs. This interpretation runs afoul of the express terms of the statute—the statute

specifically prohibits the charging of "any" fee inuring to the broker's benefit if it exceeds the previously disclosed fee unless the redisclosure requirements are met.

43. In all of the reviewed transactions, Nations failed to provide borrowers with the required written explanation of the fee and the reason for charging a fee that exceeded the previously disclosed fee.

44. The evidence established that Nations did not meet the fee disclosure requirements of this statute and is liable for restitution in the amount of \$717,586.13 as set out in Exhibit 66, however, this amount will be reduced by \$5,058.94 by virtue of the Prater Settlement—Nations has already paid "restitution" to Prater. Thus, Nations will be ordered to pay restitution to the remaining 120 injured borrowers in the amount of \$712,527.19.

45. Nations argued that Steve Willis was responsible for setting fees in the Washington loan transactions—not Jamie Chisick. It thus argued that Jamie Chisick should not be held liable for any ordered restitution. As indicated earlier, Jamie Chisick was personally involved in consumer complaints about fees. The argument that he was not involved or had no knowledge is rejected. Jamie Chisick participated in the wrongful conduct or with knowledge approved of the wrongful conduct. This Tribunal concludes that the restitution of \$712,527.19 should be ordered against Nations and Jamie Chisick, jointly and severally—the restitution shall be paid only once by Nations and/or Jamie Chisick.

46. RCW 19.146.050 provides, in pertinent part:

All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the State of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers.

Prior to July 27, 1997, mortgage brokers had to deposit all trust funds into a trust account by the end of the next business day. RCW 19.146.110 states that any person who violates RCW 19.146.050 shall be guilty of a class C felony under Chapter 9A.20 RCW. WAC 208-660-0810; -08020; -08025; and -08030 contain detailed trust accounting, record keeping, deposit and disbursement requirements.

47. Nations violated RCW 19.146.050 and applicable WACs. It was guilty of late trust fund deposits totaling 187 days late. Thus, DFI's assessment against Nations of a \$14,025.00 fine

will be upheld (this is calculated at \$75.00 for each of the 187 days the trust funds were deposited late), see Exhibit No. 61. Nations was also guilty of 26 commingling/failures to deposit trust funds, thus DFI's assessment of an additional \$1,950.00 fine will be upheld (this is calculated at \$75.00 for each of the 26 violations), see Exhibit No. 68. Nations was also guilty of an additional 64 separate violations of commingling trust funds with other funds. Thus, DFI's assessment against Nations of a \$4,800.00 fine will be upheld (this is calculated at \$75.00 times each of the 64 violations), see Exhibit No. 69.

48. DFI also seeks to impose similar trust funds violation fines of \$20,775.00 individually on Jamie Chisick, Though Nations is liable for the trust fund fines as set forth above, Jamie Chisick was not shown to have personally participated in or knowingly approved of such wrongful trust funds conduct. Accordingly, Jamie Chisick will not be held individually liable under RCW 19.146.050.

49. RCW 19.146.200(1) provides that a person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter.

50. RCW 19.146.250 states that no license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his or her own name except:

- (1) A licensed mortgage broker may operate or advertise under a name other than the one under which the license is issued by obtaining the written consent of the director to do so; and
- (2) A broker may establish one or more branch offices under a name or names different from that of the main-office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the mortgage firm on which either the name of the main or branch offices appears.

51. RCW 19.146.265 provides that:

A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. Provided that the applicant is in good standing with the department, as defined in rule by the director, the director shall promptly issue a duplicate license for

each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued.

WAC 208-660-110(1) provides that a license may not be transferred.

It is a violation of the Act for any person or mortgage broker to hold themselves out as a mortgage broker to Washington consumers from any fixed physical location, unless such location holds either a license issued pursuant to RCW 19.146.200 or a branch license issued pursuant to RCW 19.146.265.

52. Nations' only licensed location for Washington was the Bellevue office. It received an interim license effective May 30, 1995 and a permanent license effective June 30, 1995. The facts in this case established that Nations conducted solicitation and telemarketing of Washington consumers out of its unlicensed California offices. The files were maintained and processed in California. Nations also used its Portland office in handling Washington transactions. Nations conducted business with Washington consumers from unlicensed locations from February 19, 1995 through January 31, 1998. The early violations consisted of 14 transactions originated by Nations prior to May 30, 1995 when it got its interim license. Nations' unlicensed activity continued even after DFI notified Nations that this conduct violated the Act and also after Thurston County Superior Court ordered Nations to comply with the Act as a condition of the Stay. Nations will be assessed a \$97,800.00 fine under RCW 19.146.265 for its unlicensed branch office violations (assessed at \$100.00 per day for 978 days).

53. Jamie Chisick was aware of Nations branch office activity and did not take appropriate action to make sure his company was operating in compliance with Washington law. As set out earlier, Jamie Chisick did not properly supervise Nations' employees regarding the unlicensed activity. He had a responsibility to make himself reasonably informed of the law, his company's operations and whether his company was operating in compliance with Washington law. He did not take such reasonable steps regarding the maintaining of records out of state (as discussed earlier), nor with regard to the unlicensed activity from out of state branches. In this last matter, it is noted that Jamie Chisick did not instruct Darin Williams to have Nations' loan officers discontinue such unlicensed branch activity. In addition to the fine assessed against Nations, Jamie Chisick will individually be assessed a \$97,800.00 fine under RCW 19.146.265 for the unlicensed branch office violations (assessed at \$100.00 per day for 978 days).

54. RCW 19.146.235 (Director-Investigation powers-duties of person subject to examination or investigation) provides, in part, as follows:

For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the

business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The director or designated person may direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and testify, or does not produce the requested books, records, files, or other documents within the time period established in the directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling production of books, records, files, or other documents. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

55. DFI seeks to impose a fine under RCW 19.146.235 of \$16,600.00 against Nations and also a fine of \$16,600.00 individually against Jamie Chisick. This is calculated at \$100.00 per day for 166 days beginning August 18, 1997. Nations did not comply with DFI's Demand for Production of Records of June 24, 1997 (records were in California) or DFI's Demand for Production of Records of July 24, 1997 or DFI's Subpoena of August 6, 1997. Though Nations had a legitimate concern about DFI's release of information, this concern was resolved as of August 18, 1997 by the Temporary Restraining Order. In addition, Nations failed to comply with DFI's Directive to Appear and Give Testimony Under Oath issued to Jamie Chisick and eight other Nations employees. Nations failed in its attempts to impose conditions on the Directive and then failed to comply with the Directive. Neither Jamie Chisick, nor any of the other eight Nations employees appeared as directed. Under RCW 19.146.235, the \$16,600.00 fine will be upheld against Nations and the \$16,600.00 fine will also be imposed individually on Jamie Chisick who is held to have participated in the wrongful conduct or knowingly approved of such conduct.

56. RCW 19.146.220 (Director-Powers and duties-Violations as separate violations-Rules) provides, in part, as follows:

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or **revoke licenses** for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265.

57. WAC 208-660-160(1) states, in pertinent part, that the director may suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

(e) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the Mortgage Broker Practices Act.

(f) Has omitted, misrepresented, or concealed material facts in obtaining a license or in obtaining reinstatement thereof;

(g) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

...  
(j) Has aided or abetted an unlicensed person to practice in violation of the Mortgage Broker Practices Act;

(k) Has demonstrated incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

...  
(m) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(n) Has performed an act or misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession;

(o) Has failed to cooperate with the director, or his or her designee, including without limitation by:

- (i) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation or disciplinary actions or denial, suspension, or revocation of a license; or
- (ii) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;
- (p) Has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action;
- (2) The director may deny or condition approval of a branch office application, or suspend or revoke a branch office certificate, if the branch office manager has failed to provide any required items described in subsection (1)(r) and (s) of this section.

58. As set out above in RCW 19.146.220(2)(b) and WAC 208-660-160(1), the Director has the authority to suspend or revoke Nations' mortgage broker license. In view of the multiple and far-reaching violations demonstrated in this case, DFI's proposed revocation of Nations' mortgage broker license will be upheld.

59. RCW 19.146.220(2)(e) authorizes the Director to issue orders removing from office or **prohibiting** from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

- (i) Any violation of 19.146.0201(1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.1416.205(4), or 19.146.265;
- (ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;
- ...
- (iv) Failure to comply with any directive or order of the director.

60. After hearing, the Director may impose any sanction authorized by Chapter 19.146 RCW upon a showing by a preponderance of the evidence that any grounds for sanctions exist. RCW 19.146.221.

61. Grounds for sanctions exist for Jamie Chisick. Pursuant to RCW 19.146.220(2)(e), Jamie Chisick will be prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of twenty (20) years.

62. Grounds for sanctions exist for Michael Buff, Scott Johnson, Kevin Kraus and Darin Williams. Pursuant to RCW 19.146.220(2)(e), Michael Buff, Scott Johnson, Kevin Kraus and Darin Williams will be prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

63. RCW 19.146.228 provides that the Director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover the costs of administering this chapter. These fees may include an **investigation fee** to cover the costs of any investigation of the books and records of a licensee or other person subject to Chapter 19.146 RCW.

WAC 208-660-060(2) provides that upon completion of any examination of the books and records of a licensee, the Department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-five dollars (\$45.00) per hour that each staff person devoted to the examination. "The examination billing will be paid by the licensee promptly upon receipt."

64. Pursuant to RCW 19.146.228, Nations will be ordered to pay DFI an investigation fee of \$29,040.75. This charge was properly calculated at \$45.00 per hour that each staff person devoted to the examination (investigation) under WAC 208-660-060(2). DFI requests that the investigation fee be assessed personally against Jamie Chisick. WAC 208-660-060(2) provides that the "licensee" will pay the billing. This case involves an investigation of the books and records of licensee Nations. DFI in essence, argued that Jamie Chisick should be a "mortgage broker" within the meaning of RCW 19.146.010(12) and should be personally liable for the investigation fee under subsection (4) of WAC 208-660-060 which provides that a mortgage broker shall pay for an "investigation of the books and records of a mortgage broker other than a licensee". This Tribunal rejects this argument. As indicated above, this was an investigation of Nations' books and records, not an investigation of the books and records of Jamie Chisick. Thus, the investigation fee will be assessed against licensee Nations.

65. DFI seeks an order denying Nations' **application for a branch license** for its Portland and California locations. This issue is moot. Nations has ceased doing business as a



mortgage broker in Washington and has surrendered its mortgage broker license effective May 14, 1998. Thus, no order will be entered on this request.

66. During all times relevant to Nations' Washington operation and thereafter as provided by statute, Nations is subject to all of the requirements of the Mortgage Broker Practices Act including the **maintenance of records** requirements of RCW 19.146.060 and all applicable rules.

#### INITIAL ORDER

Now, for the above violations and pursuant to RCW 19.146.220, it is therefore **ORDERED** that:

1. Nations' license to hold itself out as a mortgage broker to Washington consumers is revoked.
2. Nations shall pay fines as follows:
  - a. \$64,300.00 for violations of RCW 19.146.0201(1), (2) & (3).
  - b. \$64,300.00 for violations of RCW 19.146.0201(6).
  - c. \$29,300.00 for violations of RCW 19.146.0201(7).
  - d. \$9,100.00 for violations of RCW 19.146.0201(8) pre-July 21, 1997.
  - e. \$37,100.00 for violations of RCW 19.146.0201(8).
  - f. \$37,100.00 for violations of RCW 19.146.0201(10).
  - g. \$20,775.00 for violations of RCW 19.146.050 as follows:
    - i. \$14,025.00 for 187 days late (Ex. 61).
    - ii. \$1,950.00 for 26 commingling/failures to deposit (Ex. 68).
    - iii. \$4,800.00 for 64 commingling or conversion (Ex. 69).
  - h. \$97,800.00 for violations of RCW 19.146.060(3).

- i. \$97,800.00 for violations of RCW 19.146.265.
  - j. \$16,600.00 for violations of RCW 19.146.235 (failure to comply).
3. Nations shall pay an investigation fee of \$29,040.75.
4. Nations shall maintain its books and records in compliance with RCW 19.146.060 and all applicable rules.
5. Nations and Jamie Chisick, jointly and severally, shall pay restitution in the amount of \$712,527.19 to 120 consumers as set out in Exhibit No. 66—Prater was removed since Nations has already paid restitution to Prater. This restitution shall be paid only once by Nations and/or Jamie Chisick.
6. Jamie Chisick shall pay fines as follows:
- a. \$64,300.00 for violations of RCW 19.146.0201(1), (2) & (3).
  - b. \$29,300.00 for violations of RCW 19.146.0201(7).
  - c. \$37,100.00 for violations of RCW 19.146.0201(10).
  - d. \$97,800.00 for violations of RCW 19.146.265.
  - e. \$16,600.00 for violations of RCW 19.146.235 (failure to comply).
7. Jamie Chisick is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of twenty (20) years.
8. Michael Buff is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

9. Scott Johnson is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

10. Kevin Kraus is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

11. Darin Williams is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

**Dated and Mailed** on January 18, 2002 at Olympia, Washington.



Elmer Canfield  
Administrative Law Judge  
Office of Administrative Hearings  
PO Box 9046  
Olympia, WA 98507-9046

#### **NOTICE OF FURTHER APPEAL RIGHTS**

This Initial Order becomes final unless a Petition for Review is filed with the Director of the Department of Financial Institutions, c/o Deborah Bortner, Securities Administrator, 210 - 11<sup>th</sup> Avenue SW, Room 300, Olympia, WA 98504 (PO Box 9033, Olympia, WA 98507-9033), within thirty (30) days of the mailing date of this order. Copies of the petition shall be served upon all other parties. The petition shall specify portions of the Initial Order to which exception is taken, and refer to the evidence of record which is relied upon. Any party may file a reply to a Petition for Review which shall be filed with the same above-described office within ten (10) days of service of the petition, and copies of the reply shall be served upon all other parties.

**CERTIFICATE OF SERVICE**

I, **B. J. Sumpter, Legal Secretary**, HEREBY CERTIFY that I caused a true and exact copy of the foregoing **Findings of Fact, Conclusions of Law and Proposed Order** to be mailed, postage prepaid, to the below listed parties on this 18<sup>th</sup> day of January, 2002:

✓ Nationscapital Mortgage Corp.  
1045 W Natella Ave, Suite 200  
Orange CA 92867

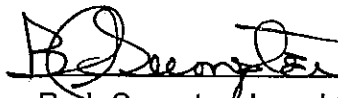
Gary Roberts, Esq.  
1211 SW 5<sup>th</sup> Ave, Suite 1700  
Portland OR 97204-3795

Scott Johnson  
1104 Kirkland Ave, #7  
Kirkland WA 98033

Alice M Blado, AAG  
Office of the Attorney General  
PO Box 40109  
Olympia WA 98504-0109

Chuck Cross  
Dept of Financial Institutions  
PO Box 41200  
Olympia WA 908504-1200

cc: Barbara Cleveland  
OAH  
MS: 42488



B. J. Sumpter, Legal Secretary